

# CONSTITUTIONS OF CANADA

Federal and Provincial

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# LES CONSTITUTIONS DU CANADA

Fédérale et Provinciales

Edited and Annotated by  
CHRISTIAN L. WIKTOR  
&  
GUY TANGUAY


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**MANITOBA**

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**Fédérale et Provinciales**

**Edited and Annotated by  
CHRISTIAN L. WIKTOR  
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GUY TANGUAY**

**PROVINCES**

*April 1981*

**1981**

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**MANITOBA**

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## INTRODUCTION



## INTRODUCTION





## MANITOBA

### Introduction

Manitoba was the first province to join Confederation after 1867. This province was actually admitted into Confederation on July 15, 1870, pursuant to the Manitoba Act, 1870 (S.C. 1870, c.3), reproduced in volume 1 of this collection, pp. B67, and subs. This statute, assented to on May 12, 1870, was followed by an imperial order in council of June 23, 1870 (see volume 1 of this collection, p. B185, and subs.), and an imperial statute, the B.N.A. Act, 1871, confirming the validity of the Manitoba Act, 1870, to be reproduced in the last volume of this collection containing historical sources. Carved out in part from the Rupert's Land and in part from the North-Western Territories, the new province did not have established governmental institutions before its admission into Confederation. According to section 9 of the Manitoba Act of 1870, this province was provided with a legislature consisting of the Lieutenant-Governor, and of two houses styled the Legislative Council and the Legislative Assembly. The Legislative Council was abolished in 1876 by a provincial statute (S.M. 1876, c. 28, s. 2).

Today the territory of Manitoba has a total area of 251,000 square miles or 650,087 km<sup>2</sup>. The province is bounded on the north by the Northwest Territories and Hudson's Bay, on the east by Ontario, on the south by the United States and on the west by Saskatchewan. Furthermore, the boundaries of Manitoba are discussed in volume 1 of this collection, p. C159, and subs. Manitoba, with its capital at Winnipeg, has a population of 1,021,506 (1976 census), of whom 71.2% claim English as their mother tongue, 5.4% French, and 21.4% another language. The province is represented in the federal Parliament by 6 Senators appointed to the Senate, and 14 members elected to the House of Commons. On the provincial level, each of the 57 electoral districts is represented by one member in the Legislative Assembly.

Subjects treated in this chapter follow the arrangement in the federal volumes 1 and 2, and are listed in the table of contents above.

Selected references:

Constitutional history:

- Morton, William L., Manitoba: The Birth of a Province,  
Altona, Man., D.W. Friesen, 1965, xxx, 265 p. (Mani-  
toba Record Society. Publications, v. 1)
- Donnelly, Murray S. "The Story of the Manitoba Legisla-  
ture", (1957), 12 Historical and Scientific Society of  
Manitoba, Papers, pp. 29-38.

General studies:

- Donnelly, Murray S., The Government of Manitoba, Toronto,  
University of Toronto Press, 1963, 185 p. (Canadian  
Government Series, 14)

Reference works:

- Canada Year Book 1978-79, Ottawa, Supply and Services  
Canada, 1978, x, 977 p.
- Encyclopedia Canadiana, Toronto, Grolier of Canada, c1975,  
vol. 6, pp. 329-356.



## MANITOBA

### Introduction

Le Manitoba fut la première province à se joindre à celles qui formèrent l'Union de 1867. Elle a été effectivement admise dans la Confédération le 15 juillet 1870 par suite de la passation de l'Acte du Manitoba, 1870 (S.C.1870, c. 3), reproduit aux pages B69 du volume 1 de cette collection. Cette loi sanctionnée le 12 mai 1870 fut suivie d'un arrêté en conseil impérial en date du 23 juin 1870 et d'une loi impériale, l'A.A.N.B., 1871 reproduit au chapitre Sources historiques du dernier volume de cette collection, qui vient confirmer la validité de l'Acte du Manitoba, 1870. Taillée partie dans la Terre de Rupert et partie dans le Territoire du Nord-Ouest, la nouvelle province n'avait pas d'institution gouvernementale établie avant son admission dans la Confédération. Par l'art. 9 de l'Acte du Manitoba, 1870, elle fut dotée d'une législature composée d'un lieutenant-gouverneur et de deux chambres, le Conseil législatif et l'Assemblée législative. Le Conseil législatif fut aboli en 1876 par une loi de la province (S.M. 1876, c. 28, art. 2).

Aujourd'hui, le territoire manitobain a une superficie totale de 251,000 milles carrés ou 650,087 kilomètres carrés. Il est délimité au nord par les Territoires du Nord-Ouest et la Baie d'Hudson, à l'est par l'Ontario, au sud par les Etats-Unis et à l'ouest par la Saskatchewan. Il est d'ailleurs question des frontières du Manitoba aux pages C161 et suivantes du volume 1 de cette collection. Cette province, dont la capitale est Winnipeg, a une population de 1,021,506 habitants (recensement 1976). La répartition de la population selon la langue maternelle est la suivante: 71.2% l'anglais, 5.4% le français et 21.4% d'autres langues. Au Parlement du Canada, la province est représentée par 6 sénateurs à la Chambre haute et par 14 députés à la Chambre des communes. Au niveau provincial, chacun des 57 districts électoraux est représenté par un député à l'Assemblée législative.

Les sujets traités dans ce chapitre sont classés suivant le plan retenu dans les volumes 1 et 2 sur la constitution fédérale et sont d'ailleurs énumérés dans la table des matières qui précède.

Sources choisies

Histoire constitutionnelle:

Morton, W.L., Manitoba: The Birth of a Province, Altona (Man.), D.W. Friesen & Sons, 1965, 265 p. (Manitoba Record Society Publications, volume 1).

Donnelly, M.S. "The Story of the Manitoba Legislature", 1957)12 Historical and Scientific Society of Manitoba Papers, pp. 29-38

Etudes générales:

Donnelly, M.S., The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p.

Ouvrages de référence:

Annuaire du Canada 1978-79, Ottawa, Approvisionnement et Services Canada, 1978, 1076 p.

Encyclopedia Canadiana, Toronto, Grolier of Canada, c1975, v. 6, pp. 329-356.



GENERAL CONSTITUTIONAL ACTS



LOIS CONSTITUTIONNELLES GÉNÉRALES





## GENERAL CONSTITUTIONAL ACTS

### Introduction

The general constitutional acts applicable to Manitoba are as follows:

1. Manitoba Act, 1870, S.C. 1870, c. 3.  
Note: This statute is reproduced in volume 1 of this collection, pp. B67, and subs.
  
2. British North America Act, 1867, as amended.  
Note: According to section 2 of the Manitoba Act, 1870, cited above, the provisions of the British North America Act, reproduced in volume 1 of this collection, pp. A10, and subs., apply to Manitoba as if this province had been one of the original provinces of Canada.
  
3. British North America Act, 1871.  
Note: This imperial statute, to be reproduced in the last volume of this collection containing historical sources, specifically confirms the validity of the Manitoba Act, 1870 mentioned above (section 5). It also denies to the Parliament of Canada any power to modify this statute, "subject always to the right of the Legislature of the province of Manitoba to alter from time to time the provisions of any law respecting the qualification of electors and members of the Legislative Assembly, and to make laws respecting elections in the said province" (section 6): Attorney General of Manitoba v. Forest, (1979), 2 S.C.R. 1032.

Act for Expediting the Decision of Constitutional and Other Provincial Questions, R.S.M. 1970, c. C180.

Note: This statute of Manitoba, reproduced below, authorizes the Lieutenant Governor in Council to refer any matter, constitutional or other, to the Court of Appeal

of the Court of Queen's Bench of Manitoba.

5. Federal Courts Jurisdiction Act, R.S.M. 1970, c. C270.  
Note: This provincial statute, reproduced below, deals with the jurisdiction of the Supreme Court and the Federal Court of Canada concerning controversies between Manitoba and the government of Canada or any other province, as well as any question of the validity of a federal or a Manitoba statute.



## LOIS CONSTITUTIONNELLES GÉNÉRALES

### Introduction

Les lois constitutionnelles générales applicables au Manitoba sont les lois suivantes:

1. Acte du Manitoba, 1870, S.C. 1870, c. 3  
 Cette loi est reproduite aux pages B67 et suivantes du volume 1 de cette collection.
2. A.A.N.B., 1867 et ses modifications  
 Selon l'art. 2 de l'Acte du Manitoba, 1870 précité, les dispositions générales de l'A.A.N.B., 1867 s'appliquent au Manitoba comme si cette province eût été une des provinces originaires du Canada.
3. A.A.N.B. 1871  
 Cette loi impériale, reproduite au chapitre Sources historiques du dernier volume de cette collection, confirme notamment la validité de l'Acte du Manitoba, 1870 déjà signalé (art. 5) et nie au Parlement fédéral tout pouvoir de modification dudit acte, "sujet toujours au droit de la législature de la Province du Manitoba de changer de temps à autre les dispositions d'aucune loi concernant la qualification des électeurs et des députés à l'Assemblée Législative, et de décréter des lois relatives aux élections dans la dite province" (art. 6): Procureur général du Manitoba c. Forest et al, (1979)2 R.C.S. 1032.
4. Act for Expediting the Decision of Constitutional and Other Provincial Questions, R.S.M. 1970, c. C180  
 Cette loi manitobaine, reproduite plus loin, permet au lieutenant-gouverneur en conseil de référer toute question, constitutionnelle ou autre, à la considération de la Cour d'appel ou de la Cour du Banc de la Reine du Manitoba.
5. Federal Courts Jurisdiction Act, R.S.M. 1970, c. C270  
 Cette loi provinciale, reproduite ci-après, reconnaît la compétence de la Cour suprême du Canada et de la Cour fédérale du Canada sur tout litige entre le Manitoba et l'état fédéral ou une autre province, de même que sur toute question relative à la validité d'une loi fédérale ou manitobaine.

## **AN ACT FOR EXPEDITING THE DECISION OF CONSTITUTIONAL AND OTHER PROVINCIAL QUESTIONS.**

R.S.M. 1970, c. C180

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### **REFERENCE TO COURT OF QUEEN'S BENCH**

#### **Reference to court or judge authorized.**

**1** The Lieutenant Governor in Council may refer to the Court of Queen's Bench or a judge thereof, or to the Court of Appeal or a judge thereof, for hearing or consideration, any matter which he thinks fit to refer; and the court or judge shall thereupon hear or consider the same.

R.S.M., c. 44, s. 1.

#### **Court or judge to certify opinion.**

**2** The court or judge shall certify to the Lieutenant Governor in Council its or his opinion on the question referred, with the reasons therefor, which shall be given in like manner as in the case of a judgment in an ordinary action; and any judge who differs from the opinion of the majority may in like manner certify his opinion, with his reasons therefor, to the Lieutenant Governor in Council.

R.S.M., c. 44, s. 2.

#### **Notice to Attorney-General of Canada.**

**3** If the matter relates to the constitutional validity of an Act of the Legislature, or some provision in any such Act, the Attorney-General of Canada shall be notified of the hearing in order to be heard if he sees fit.

R.S.M., c. 44, s. 3.

#### **Notice to persons interested.**

**4(1)** The court or judge may direct that any person interested, or, where there is a class of persons interested, any one or more persons as representatives of that class, shall be notified of the hearing, and those persons shall be entitled to be heard.

#### **Appearance of Crown in right of other provinces, etc.**

**4(2)** Where Her Majesty in right of Canada, or Her Majesty in right of any other province of Canada, is interested in a matter referred under section 1, the Attorney-General of Canada or the Attorney-General of that other province, as the case may be, may, on giving not less than fourteen days' written notice to the court and to the Attorney-General of Manitoba, appear in person or by counsel and be heard with respect to the matter.

## CONSTITUTIONAL QUESTIONS

**Appearance of counsel.**

**4(3)** Where a matter referred under section 1 arises out of the agreement between the Government of Canada and the Government of Manitoba made under The Taxation Agreement Act, 1952, or any agreement of a like character made under The Taxation Agreement Act, 1957, or under any similar Act that comes into force after the fifth day of April, 1957, including any agreement made under The Income Tax Act (Manitoba), 1962, if the Attorney-General of Canada or the Attorney-General of another province desires to appear and be heard, notwithstanding The Law Society Act or any other Act of the Legislature, he may so appear and be heard, and may be represented, by counsel who is a member of the Bar of, and entitled to practise in the courts of, any other province of Canada.

Am. S.M., 1958, (1st Sess.), c. 8, s. 1; S.M., 1962, c. 66, s. 6, R.S.M., c. 44, s. 4; am.

**Appointment of counsel to argue case.**

**5** Where any interest affected is not represented by counsel, the court or judge may, in its or his discretion, request some counsel to argue the case in such interest; and the reasonable expenses thereof shall be paid by the Minister of Finance.

R.S.M., c. 44, s. 5.

**Appeal.**

**6** The opinion of the court or judge shall be deemed a judgment of the court, and an appeal lies therefrom as in the case of a judgment in an action.

R.S.M., c. 44, s. 6.

Note: See The Federal Courts Jurisdiction Act for jurisdiction in controversies between Canada and Manitoba.



THE FEDERAL COURTS JURISDICTION ACT

R.S.M. 1970, c. C270

Amended by 1971, c. 82, s. 13; 1978, c. 49, s. 26

Modifié par 1971, c. 82, art. 13; 1978, c. 49, art. 26

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

**Jurisdiction.**

**1** The Supreme Court of Canada and the Federal Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Acts of the Parliament of Canada known as the Supreme Court Act and the Exchequer Court Act have or has jurisdiction in cases of

- (a) controversies between Canada and the Province of Manitoba;
- (b) controversies between any other province of Canada, that may have passed an Act similar to this Act, and the Province of Manitoba;
- (c) suits, actions, or proceedings, in which the parties thereto, by their pleadings, have raised the question of the validity of an Act of the Parliament of Canada or of an Act of the Legislature, when, in the opinion of a judge of the court in which they are pending, the question is material; and in such a case the judge shall, at the request of the parties, and may, without such a request, if he thinks fit, order the case to be removed to the Supreme Court of Canada in order to the decision of the question.

R.S.M., c. 51, s. 2; am.

**Dominion court to have use of court houses, etc.**

**2** Where sittings of any court of Canada or of any judge thereof are appointed to be held in any place in the province in which a court house is situated, the court or judge has, in all respects, the same authority as a judge of the Court of Queen's Bench at nisi prius in regard to the use of the court house and other building set apart for the administration of justice in the province.

R.S.M., c. 51, s. 3; am.

INTERGOVERNMENTAL RELATIONS



RELATIONS INTERGOUVERNEMENTALES





## INTERGOVERNMENTAL RELATIONS

### Note:

The province of Manitoba has not conferred the responsibility for its intergovernmental relations with the federal government, other provinces or foreign countries to any special department. Indeed, section 16 of the Executive Government Organization Act (S.M. 1970, c. 17), reproduced below in the chapter dealing with the "Executive Power", provides that the Lieutenant Governor in Council may authorize a minister to enter into an agreement with the government of Canada or of another province.

Concerning intergovernmental relations dealing with natural resources, the following statute should be consulted: The Manitoba Natural Resources Act, passed by the Parliament of Canada (S.C. 1930, c. 29, as amended), and approved by the Legislature of Manitoba (R.S.M. 1970, c. N30, c. N40, c. N50, c. N60, and c. N70). The text of the federal statute is reproduced in volume 2 of this collection, pp. D95, and subs. As to provincial legislation on this subject, the following statute should be mentioned: Trans-Canada Highway Act, R.S.M. 1970, c. T140. This statute, not reproduced here, provides in particular for the entry into agreements with the federal government in matters concerning the construction and the maintenance of the Trans-Canada Highway which goes through the province.

Intergovernmental fiscal relations were discussed in volume 2 of this collection, pp. D167, and subs. As to provincial legislation on this subject, it provides for or approves the conclusion of agreements with the government of Canada. The following statutes, not reproduced here, should be mentioned:

1. Act Respecting Agreements Made with Respect to the Canada Pension Plan, R.S.M. 1970, c. C10.
2. Act to Ratify an Agreement between the Government of Canada and the Government of the Province of Manitoba under the

Anti-Inflation Act (Canada), S.M. 1977 (2nd), c. 1.

Selected references:

Donnelly, Murray S., The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p. See especially pp. 158-170.

## RELATIONS INTERGOUVERNEMENTALES

### Note:

Les relations intergouvernementales du Manitoba avec l'état fédéral, les autres provinces du Canada ou les pays étrangers ne relèvent pas d'un ministère particulier. Effectivement, l'art. 16 du Executive Government Organization Act (S.M. 1970, c. 17), reproduit plus loin dans le chapitre intitulé "POUVOIR EXECUTIF", prévoit que le lieutenant-gouverneur en conseil peut autoriser tout ministre à conclure des ententes avec le gouvernement du Canada ou d'une autre province.

Dans le domaine des relations intergouvernementales relatives aux ressources naturelles, il convient de se rappeler la Loi des ressources naturelles du Manitoba sanctionnée par le Parlement du Canada (S.C. 1930, c. 29 et ses modifications) et ratifiée par le législateur manitobain (R.S.M. 1970, c. N30, c. N40, c. N50, c. N60 et c. N70). La loi fédérale est reproduite aux pages D95 et suivantes du volume 2 de cette collection. Au plan de la législation provinciale en ce domaine, seul le Trans-Canada Highway Act, R.S.M. 1970, c. T140, attire notre attention. Cette loi, non reproduite ici, autorise notamment la conclusion d'ententes avec le gouvernement fédéral relativement à la construction et à l'entretien de la route trans-canadienne qui traverse la province.

En ce qui regarde les relations fiscales intergouvernementales, on peut se référer au chapitre consacré à ce sujet aux pages D169 et suivantes du volume 2 de cette collection. Quant à la législation provinciale en la matière, elle permet ou ratifie la conclusion d'ententes avec le gouvernement du Canada. Elle comprend les lois suivantes, non reproduites:

1. Act Respecting Agreements Made with Respect to the Canada Pension Plan, R.S.M. 1970, c. C10
2. Act to Ratify an Agreement between the Government of Canada and the Government of the Province of Manitoba under the Anti-Inflation Act (Canada), S.M. 1977 (2nd), c. 1.



Source choisie

Donnelly, M.S., The Gouvernement of Manitoba, Toronto  
University of Toronto Press, 1963, 185 p. Consul-  
ter pp. 158-170

EXECUTIVE POWER



POUVOIR EXÉCUTIF





## EXECUTIVE POWER

### Introduction

The executive power in Manitoba derives its statutory authority from the Manitoba Act, 1870 (S.C. 1870, c. 3), sections 2, 6 and 7, the British North America Act, 1867, sections 58 to 62, 66, and 67, and the Executive Government Organization Act (S.M. 1970, c. 17; C.C.S.M., c. E170). While the first two statutes are reproduced in volume 1 of this collection, at pp. B67, and A9, the last statute is reproduced below.

According to these statutory provisions, the executive power in Manitoba is vested in the Lieutenant Governor advised by the Executive Council. The Executive Council consists of the Premier of the province and the Cabinet of Ministers. In order to better understand the functions and powers of the Lieutenant Governor and the Executive Council, the user should consult, in addition to the legislative sources mentioned above, Chapter E in volume 2 of this collection which deals with the federal executive power. The general observations contained in the introduction (pp. E5, and E6), and in sections on the Governor General (p. E23), the Lieutenant Governor (p. E39), and the Cabinet (pp. E47, and E48), apply mutatis mutandis to this chapter as well. In effect it is the Premier and his Cabinet who, according to constitutional conventions, exercise the executive power while the Lieutenant Governor remains the nominal head of the provincial executive.

The Executive Government Organization Act mentioned above is a general statute describing in broad terms the respective powers and duties of the Lieutenant Governor and the ministers. It does not create any department. It specifies rather that it is within the jurisdiction of the Lieutenant Governor in Council to establish departments and to determine their powers, duties and functions. Existing departments can be located in two looseleaf publications: the Manitoba Government Telephone Directory, and the Corpus Administrative Index. Finally, it should be mentioned that

government departments and agencies are submitted to the scrutiny of the Ombudsman as defined in the Ombudsman Act, R.S.M. 1970, c. O45, as amended.

Selected references:

Donnelly, Murray S., The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p. (Canadian Government Series, 14). See especially pp. 97-119.

## POUVOIR EXÉCUTIF

### Introduction

Au Manitoba, le pouvoir exécutif trouve son fondement législatif dans l'Acte du Manitoba, 1870 (S.C. 1870, c. 3), art. 2, 6 et 7, dans l'A.A.N.B., 1867, art. 58-62, 66, 67 et dans l'Executive Government Organization Act (S.M. 1970, c. 17; C.C.S.M., c. E170). Alors que les deux premiers actes sont reproduits respectivement aux pages B67 et A9 du volume 1 de cette collection, la dernière loi mentionnée est rapportée ci-après.

Suivant ces dispositions législatives, le pouvoir exécutif manitobain se compose du lieutenant-gouverneur assisté d'un conseil exécutif. Ce conseil exécutif comprend le premier ministre de la province et le cabinet des ministres. Afin de mieux comprendre les rôles et pouvoirs respectifs du lieutenant-gouverneur et du conseil exécutif, le lecteur aurait avantage à consulter, outre la législation ci-haut mentionnée, le chapitre E du volume 2 consacré au pouvoir exécutif fédéral. Les observations qui sont faites dans l'introduction générale (pp. E7-E8), de même que dans les paragraphes sur le gouverneur général (p. E25), sur le lieutenant-gouverneur (pp. E40 et suivantes) et sur le cabinet des ministres (pp. E49-E50), s'appliquent mutatis mutandis au présent chapitre. Rappelons que suivant la pratique constitutionnelle, c'est le cabinet des ministres qui exerce effectivement le pouvoir exécutif; le lieutenant-gouverneur, de son côté, règne mais ne gouverne pas.

L'Executive Government Organization Act précité est une loi-cadre qui décrit de façon générale les pouvoirs et devoirs respectifs du lieutenant-gouverneur et des ministres. Cette loi ne crée aucun ministère. Elle stipule plutôt qu'il appartient au lieutenant-gouverneur en conseil d'établir des ministères et de définir les pouvoirs et fonctions de chacun. Aussi, pour connaître les ministères existants, il est suggéré de consulter les deux services de mises à jour suivants: Manitoba Government Directory et Corpus Administrative Index. Soulignons enfin que les ministères, les sociétés et régies d'état sont soumis au pouvoir d'enquête de l'ombudsman tel que défini dans

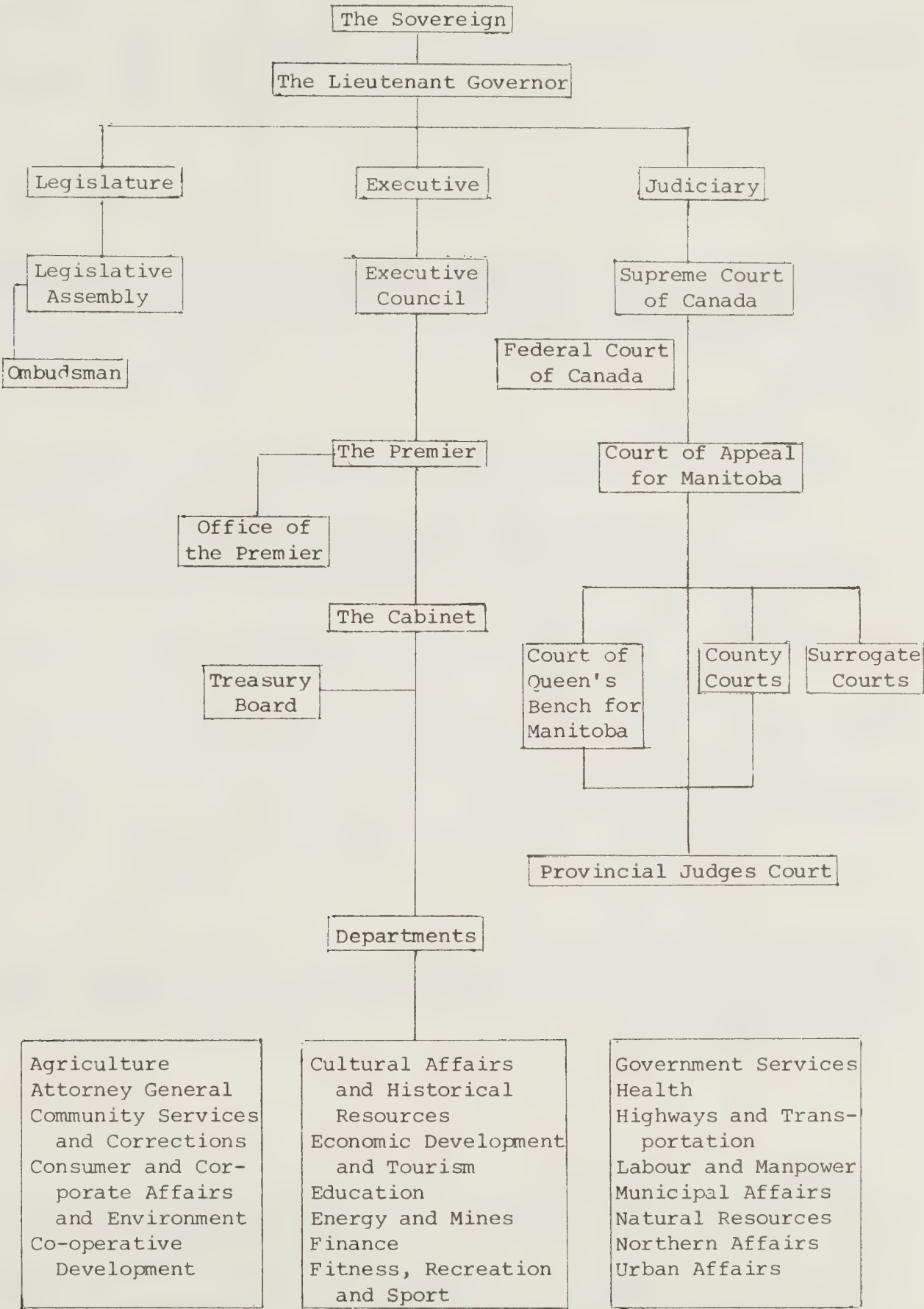


1' Ombudsman Act, R.S.M. 1970, c. 045 et ses modifications.

Source choisie

Donnelly, M.S. The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p. Consulter pp. 97-1

The Government of Manitoba



## THE EXECUTIVE GOVERNMENT ORGANIZATION ACT.

S.M. 1970, c. 17; C.C.S.M. c. E170

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### Definitions.

#### 1 In this Act

- (a) "department" means a department or branch of the executive government;
- (b) "executive council" means the executive council of the province;  
(Note: See section 7 of The Manitoba Act, 1870 SCE 1870 cap. 3)
- (c) "executive government" means the executive government of the province;
- (d) "minister" means a member of the executive council.  
S.M. 1970, c. 17, s. 1.

### Members of the executive council.

2 (1) There shall be an executive council of the province which shall be composed of such persons as the Lieutenant Governor appoints.

### Order of rank of ministers.

2 (2) The members of the executive council shall be ministers of the Crown, and shall rank among themselves in the order of their appointments as members of the executive council.  
S.M. 1970, c. 17, s. 2.

### Presiding over departments.

3 (1) The Lieutenant Governor in Council may appoint, under the Great Seal of the province, from among the ministers, to hold office during pleasure, a President of the executive council and ministers to preside over the several departments and to discharge such duties, exercise such powers and perform such functions as he may prescribe; and the Lieutenant Governor in Council may determine the titles by which those ministers shall be known.

### Additional departments.

3 (2) One minister may be appointed to preside over two or more departments.



## EXECUTIVE GOVERNMENT

### Ministers without departments.

**3 (3)** Where a minister does not preside over a department, an appointment under subsection (1) is not required.

S.M. 1970, c. 17, s. 3.

### Acting ministers.

**4** The Lieutenant Governor in Council may, either in special cases or generally, appoint a minister as acting minister for any other minister during the absence or incapacity from any cause of that other minister; and all acts of an acting minister shall have the same effect as if done by the minister in whose place he is acting.

S.M. 1970, c. 17, s. 4.

### Transfer of minister's duties, etc.

**5 (1)** The lieutenant Governor in Council may transfer and assign to any minister, by name, title or otherwise, any or all of the powers, duties and functions given or imposed by law to or on any other minister.

### Exercise of transferred powers, etc.

**5 (2)** Where any or all of the powers, duties and functions of a minister are transferred to another minister under subsection (1), the minister to whom the powers, duties and functions are transferred may exercise the powers and perform the duties and functions under his title or the title of the minister from whom they are transferred.

### References to ministers.

**5 (3)** Where, in any Act of the Legislature or any regulation, order or document, there is reference to a minister by title, the Lieutenant Governor in Council may designate another minister by name, title or otherwise, who shall be deemed to be the minister to whom reference is made in the Act, regulation, order or document.

S.M. 1970, c. 17, s. 5.

### Remuneration of ministers.

**6** The Lieutenant Governor in Council may fix the remuneration of the ministers.

S.M. 1970, c. 17, s. 6.

### Committees of Cabinet.

**7** The Lieutenant Governor in Council may establish a committee of the executive council to study and advise on matters relating to the management of the executive government and a committee to study and advise on planning of government programs and projects and their relative priorities, and such other committees as he deems advisable.

S.M. 1970, c. 17, s. 7.

## EXECUTIVE GOVERNMENT

### Organization of the executive government.

8 Notwithstanding any Act of the Legislature, the Lieutenant Governor in Council may determine the organization of the executive government and of the various departments thereof, and for that purpose may

- (a) establish, vary or disestablish any department;
- (b) determine or vary the duties and functions of any department and transfer any duties and functions from one department to another; and
- (c) determine or change the name of any department.

S.M. 1970, c. 17, s. 8.

### Expenditures for government programs.

9 (1) Moneys required to be expended for the purpose of carrying out the duties and functions or exercising the powers of the executive government or for the purpose of the administration by the executive government of any Act of the Legislature shall be paid from and out of the Consolidated Fund with moneys authorized by an Act of the Legislature to be paid and applied for those purposes.

### Transferred duties and functions.

9 (2) Where under section 8, duties and functions of a department are transferred to another department, the Lieutenant Governor in Council may order that all or part of the moneys authorized by an Act of the Legislature to be paid and applied for the purposes of those duties and functions and remaining unexpended, as he deems appropriate shall be expended through that other department to which those duties and functions are transferred and thereupon those moneys may be expended for those duties and functions as though they had been authorized by the Act of the Legislature to be paid and applied for the purposes of those duties and functions being performed by that other department.

S.M. 1970, c. 17, s. 9.

### Delegation of ministerial powers.

10 (1) Where, under any Act of the Legislature, power or authority to do any act or thing, including, without limiting the generality of the foregoing, power or authority

- (a) to enter into any agreement; or
- (b) to execute or approve any transfer, deed, conveyance, notice, demand, agreement, lease, caveat, lien, plan or other document; or
- (c) to issue, grant, suspend, or cancel any permit, licence, certificate, or authority; or
- (d) to execute, issue or approve, any order or requisition, warrant, or document, for work, purchase of goods, quotation of prices or articles or materials, or other purpose; or
- (e) to receive any notice, direction or other document;

is granted to, or vested in, a minister, the minister may, by written authorization approved by the Lieutenant Governor in Council, delegate that power or authority to any person employed under him in the executive government, subject to such limitations, restriction, conditions, and requirements as the minister may impose and as are set out in the written authorization.



## EXECUTIVE GOVERNMENT

### **Limitations on delegated powers.**

**10 (2)** In exercising any power or authority delegated to him under subsection (1), the person to whom it is delegated is bound by, and shall observe and conform to, any limitations, restrictions, conditions, and requirements so imposed by the minister or to which the minister is subject in himself exercising the power or authority under the Act in which it is granted to, or vested in, him.

### **Effect on 19 (3) Interpretation Act.**

**10 (3)** Nothing in this section restricts or limits the authority for which provision is made in subsection (3) of section 19 of The Interpretation Act.

S.M. 1970, c. 17, s. 10.

### **Staff.**

**11 (1)** Such officers and employees, including deputies for the several ministers, as are required to perform the duties and functions of the several departments and agencies of the government that are not corporate entities may be employed as provided in The Civil Service Act.

### **Staff for corporate agencies.**

**11 (2)** Such officers and employees as are required to perform the duties and functions of any agency of the government that is a corporate entity may be employed by that agency, and where The Civil Service Act applies to that agency or the officers or employees employed by that agency, the employment shall be in accordance with The Civil Service Act.

S.M. 1970, c. 17, s. 11.

### **Great seal.**

**12 (1)** The Lieutenant Governor in Council may alter or vary the Great Seal of the Province of Manitoba.

### **Keeper of the Great seal.**

**12 (2)** The Lieutenant Governor in Council shall designate a minister to be the keeper of the Great Seal of the Province of Manitoba; and the minister so designated shall issue all documents under the Great Seal and countersign them.

S.M. 1970, c. 17, s. 12.

### **Departmental seal.**

**13 (1)** Subject to any other Act of the Legislature, the Lieutenant Governor in Council may appoint and alter a seal for any department; and the seal so appointed for any department, or as so altered, shall be the seal of that department.

### **Use of existing seal.**

**13 (2)** Where on the coming into force of this section a departmental seal was in existence for, and in use by, any department, that seal shall continue to be the seal of the department until otherwise ordered by the Lieutenant Governor in Council.

S.M. 1970, c. 17, s. 13.



## EXECUTIVE GOVERNMENT

### Commuting and remitting sentences.

14 The Lieutenant Governor in Council may commute and remit any sentence for an offence against the laws of the province or for an offence over which the legislative authority of the province extends.

S.M. 1970, c. 17, s. 14.

### Tariffs of fees.

15 The Lieutenant Governor in Council may, by regulation, prescribe tariffs of fees that shall be paid to the government in respect of the issuing of, granting of, registration of, filing of, or application for, commissions, letters patent, licences, permits, documents, conveyances, grants, orders, or any or all of them, issued, granted, registered or filed by or with any minister, officer of the government, department or government office or in respect of the searching of any register, file, or document, kept by any minister, officer of the government, department or government office and that is available for search by the public.

S.M. 1970, c. 17, s. 15

### Agreements with other authorities.

16 The Lieutenant Governor in Council may authorize a minister, for and on behalf of the government, or an agency of the government, to enter into an agreement with

- (a) the Government of Canada, or a minister or agency of the Government of Canada; or
- (b) the government of another province of Canada, or a minister or agency of the government of another province of Canada; or
- (c) a municipality, school district, school division, or other local authority; or
- (d) any person or group of persons;

for the benefit or purposes of the residents of Manitoba or any part thereof.

S.M. 1970, c. 17, s. 16.

### Residual powers of Lieutenant Governor in Council.

17 (1) In matters within the jurisdiction of the Legislature, all powers, authorities, and functions that, in respect of like matters, were vested in or exercisable by the Governors or the Lieutenant Governors of the several provinces now forming part of Canada or any of the provinces, under commissions, instructions, or otherwise, at or before the passing of the British North America Act, 1867, are vested in and exercisable by the Lieutenant Governor in the name of Her Majesty.

### Royal prerogative.

17 (2) Nothing in this section affects the royal prerogative.

(Note: See section 65 of the B.N.A. Act, 1867, and section 2 of The Manitoba Act, 1870.)

S.M. 1970, c. 17, s. 17

LEGISLATIVE POWER



POUVOIR LÉGISLATIF

## LEGISLATIVE POWER

### Introduction

The statutory provisions concerning the legislative power of Manitoba deal with the composition and function of the legislature, describe the electoral system in effect, and treat the examination, publication and interpretation of statutes and regulations. This chapter is therefore divided as follows:

- a. Legislative bodies.
- b. Representation.
- c. Statutes and regulations.

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## POUVOIR LÉGISLATIF

### Introduction

La législation manitobaine relative à l'autorité législative porte sur les composantes et le fonctionnement du pouvoir législatif, décrit le système électoral en vigueur et traite de l'examen, de la publication et de l'interprétation des textes législatifs et réglementaires. C'est pourquoi le présent chapitre est subdivisé comme suit:

- a. Les composantes du pouvoir législatif
- b. La représentation
- c. Les lois et règlements

## LEGISLATIVE BODIES

### Introduction

The legislative power in Manitoba is vested in the Lieutenant Governor and one elected chamber, the Legislative Assembly, as provided for by section 3 of the Legislative Assembly Act, reproduced below. As mentioned already, when Manitoba joined the Confederation in 1870, it was provided with a legislature consisting of the Lieutenant Governor, and two houses, one appointed and called the Legislative Council, and the other one elected and called the Legislative Assembly (Act of Manitoba, 1870, s. 9). The Legislative Council, whose members were appointed by the Lieutenant Governor, was, however, abolished in 1876 by a provincial statute (S.M. 1876, c. 28, s. 2). In the exercise of its function, the Legislative Assembly of Manitoba has to follow, of course, the division of legislative powers between the federal and provincial governments as set up especially in sections 91 to 95 of the British North America Act. In their relations with the executive and the judicial powers, the holders of the legislative power also have to take into consideration constitutional principles relating to the parliamentary system and the form of responsible government which prevail in Canada. These principles are stated briefly in the introduction to the federal legislative power, in volume 2 of this collection, pp. F5, and subs.

The Lieutenant Governor, the chief executive officer of the province, also exercises some legislative functions. He invites the leader of the political party which obtained a majority of the popular votes in an election to form a new government. He summons, adjourns, or dissolves the Legislative Assembly, and presides at the opening of each of its sessions. The major legislative function of the Lieutenant Governor is to give royal assent to all bills passed by the Legislative Assembly, giving them final legal effect. He can, however, withhold the assent or reserve the bill for the approbation by the Governor General of Canada, but this power is rarely used. The Legislative Assembly, on the other hand, performs its functions as a legislator enacting legislation within its jurisdiction, exercising supervision and control over



government and administrative actions, and serving as a forum for discussion on matters of provincial, regional or local interest. It is for the province what the House of Commons is for the federal government. It is governed by the Legislative Assembly Act reproduced below, and by implementing regulations.

Selected references:

- Donnelly, Murray S., The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p. (Canadian Government Series, 14). See especially pp. 71-96.
- Donnelly, Murray S., "The Story of the Manitoba Legislature", (1957), 12 Historical and Scientific Society of Manitoba, Papers, pp. 29-38.

## LES COMPOSANTES DU POUVOIR LÉGISLATIF

### Introduction

Au Manitoba, le pouvoir législatif est dévolu au lieutenant-gouverneur et à une chambre élue, désignée sous le nom d'Assemblée législative suivant les dispositions de l'art. 3 du Legislative Assembly Act reproduit ci-après. Rappelons qu'au moment de l'admission du Manitoba dans la Confédération, la législature de cette province se composait du lieutenant-gouverneur et de deux chambres, l'une non élue et appelée Conseil législatif, l'autre élue et connue sous le nom d'Assemblée législative: Acte du Manitoba, 1870, art. 9. Le Conseil législatif, dont les membres étaient nommés par le lieutenant-gouverneur, fut toutefois aboli en 1876 par une loi provinciale (S.M. 1876, c. 28, art. 2). Dans l'exercice de ses pouvoirs, le législateur manitobain doit évidemment respecter le partage des compétences législatives entre l'état fédéral et les provinces tel qu'établi plus particulièrement aux articles 91 à 95 de l'A.A.N.B.. Dans leurs rapports avec les pouvoirs exécutif et judiciaire, les détenteurs du pouvoir législatif doivent également tenir compte des principes constitutionnels rattachés au régime parlementaire et au système de gouvernement responsable en vigueur au Canada. Ces principes sont brièvement énoncés dans l'introduction générale sur le pouvoir législatif fédéral aux pages F8 et suivantes du volume 2 de la présente collection.

Chef de l'exécutif provincial, le lieutenant-gouverneur exerce aussi certaines fonctions reliées au pouvoir législatif. C'est lui qui, à la suite d'une élection, invite le chef du parti politique majoritairement élu par le peuple à former le nouveau gouvernement. C'est lui qui convoque, proroge et dissout chaque législature et préside l'ouverture de chaque session. Sa principale fonction parlementaire consiste à sanctionner les lois adoptées par l'Assemblée législative et à leur donner ainsi une existence juridique. Mais il peut aussi désavouer ces lois ou les réserver à l'approbation du gouverneur-général du Canada; cependant, ce pouvoir de désaveu ou de réserve est rarement exercé. De son côté, l'Assemblée législative remplit la fonction de législateur, exerce une surveillance et un contrôle sur les actions du gouvernement et de l'administration et sert de forum de délibérations où sont débattues les questions d'intérêt provincial, régional et local. Elle est en quelque sorte à la province ce que la Chambre des communes est à l'état fédéral. Elle est régie par le Legislative Assembly Act reproduit ci-après, de même que par les règlements qu'elle s'est elle-même donnés.

Sources choisies

Donnelly, M.S., The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p. Consulter pp. 71-96.

Donnelly, M.S., "The Story of the Manitoba Legislature", (1957) 12 Historical and Scientific Society of Manitoba Papers, pp. 29-38.

## LEGISLATIVE ASSEMBLY ACT

R.S.M. 1970, c. L110

Amended by S.M. 1970, c. 101; 1971, c. 80, and c. 82, s. 34; 1972, c. 81, s. 17; 1974, c. 68; 1975, c. 42, s. 33; 1976, c. 54; 1977, c. 6; 1978, c. 42, and c. 49, s. 61; 1980, c. 39.

Note:

Not reproduced here are sections 59 to 64, and 66.4 to 87, dealing with various indemnities and allowances paid to members of the Legislative Assembly, as well as some of their privileges. It should be useful, however, to check the most recent edition of Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba.

## LEGISLATIVE ASSEMBLY ACT

R.S.M. 1970, c. L110

Modifié par S.M. 1970, c. 101; 1971, c. 80 et c. 82, art. 34; 1972, c. 81, art. 17; 1974, c. 68; 1975, c. 42, art. 33; 1976, c. 54; 1977, c. 6; 1978, c. 42 et c. 49, art. 61; 1980, c. 39

Note:

Ne sont pas reproduits les art. 59 à 64 et 66.4 à 87 qui traitent des diverses indemnités et allocations versées aux membres de l'Assemblée législative ainsi que de certains avantages qui leur sont accordés.

Par ailleurs, il y aurait lieu de consulter aussi l'édition la plus récente des Rules, Orders and Forms of Proceedings of the Legislative Assembly of Manitoba.



## **AN ACT RESPECTING THE LEGISLATURE OF MANITOBA.**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### **Short title.**

**1** This Act may be cited as: "The Legislative Assembly Act".

R.S.M., c. 141, s. 1.

### **Definitions.**

**2** In this Act the expression "Crown agency" means

- (a) any board, commission, association, or other body, whether incorporated or unincorporated, all the members of which, or all the members of the board of management or board of directors of which,
  - (i) are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council; or
  - (ii) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown; or
- (b) any corporation the election of the board of directors of which is controlled by the Crown, directly or indirectly, through ownership of shares of the capital stock thereof by the Crown or by a board, commission, association, or other body to which clause (a) applies.

En. S.M., 1962, c. 37, s. 1; am. S.M., 1965, c. 76, s. 2.

## **PART I**

### **COMPOSITION OF LEGISLATURE**

#### **Composition of Legislature.**

**3** The Legislature of the Province of Manitoba shall consist of the Lieutenant Governor and the Legislative Assembly.

R.S.M., c. 141, s. 2.

Note: Section 9 of The Manitoba Act, 1870 (Canada) provided for a Legislative Council. This was abolished 39 Vic. c. 28, s. 2 (Manitoba).

### **COMPOSITION AND DURATION OF ASSEMBLY**

#### **Composition of assembly.**

**4(1)** The Legislative Assembly shall be composed of fifty-seven members elected to represent the electoral divisions into which the province is divided.

Note: Section 14 of The Manitoba Act, 1870 (Canada) fixed membership at twenty-four.

## LEGISLATURE

### Representation of electoral divisions.

**4(2)** Each electoral division of the province shall be represented in the Legislative Assembly by one member.

R. & S., S.M., 1957, c. 37, s. 1; R.S.M., c. 141, s. 3; am.

Note: Number of electoral divisions and boundaries thereof specified in The Electoral Divisions Act.

Election procedure governed by The Election Act.

### Duration of assembly.

**5(1)** Every Legislative Assembly shall continue for five years from the tenth day after the day upon which polling takes place for the general election of members; but the Lieutenant Governor may at any time dissolve the assembly if he deems it advisable.

Note: See section 19 of The Manitoba Act, 1870 (Canada).

### Interpretation.

**5(2)** The expression "the day upon which polling takes place for the general election of members" used in subsection (1) means the day upon which polling takes place generally and not the day upon which polling takes place upon an election which is deferred under The Election Act.

R.S.M., c. 141, s. 4.

Note: Respecting deferred elections - See sec. 7(2) and 9 of The Election Act.

### Session once a year.

**6** There shall be a session of the Legislature at least once in every year, so that twelve months shall not intervene between the last sitting of the Legislature in one session and the first sitting in the next.

R.S.M., c. 116, s. 5.

Note: See provision in sec. 20 of The Manitoba Act, 1870 (Canada).

### Assembly not dissolved by demise of Crown.

**7(1)** The Legislative Assembly shall not determine or be dissolved by the demise of the Crown, but shall continue and may meet, convene and sit, proceed and act, in the same manner as if the demise had not happened.

Am.

### Prerogative saved.

**7(2)** Nothing in this section alters or abridges the power of the Crown to prorogue or dissolve the Legislative Assembly.

R.S.M., c. 141, s. 6; am.

### Prorogation of Legislature.

**8** It is not necessary for the Lieutenant Governor in proroguing the Legislature to name any day to which it is prorogued, or to issue a formal proclamation for a meeting of the Legislature when it is not intended that the Legislature shall meet for the dispatch of business.

R.S.M., c. 141, s. 7.

## LEGISLATURE

### QUORUM

#### **Quorum.**

**9** The quorum required for the transaction of business in the Legislative Assembly is ten, of whom the Speaker may be one.

R.S.M., c. 141, s. 8; am.

Note: Original Provisions for Quorum—See sec. 15 of The Manitoba Act, 1870 (Canada) and rule 4 of the Rules of the House.

### SPEAKER'S VOTE

#### **Decision of questions in assembly.**

**10** Questions arising in the Legislative Assembly shall be decided by a majority of votes other than those of the Speaker; and when the votes are equal, but not otherwise, the Speaker has a vote.

R.S.M., c. 141, s. 9; am.

Note: Similar provision in section 49 of the B.N.A. Act, 1867, made applicable to province by sec. 21 of The Manitoba Act, 1870 (Canada).

### QUALIFICATION OF MEMBERS

#### **Oath of members.**

**11** Every member of the Legislative Assembly, before taking his seat therein, shall take and subscribe before the Lieutenant Governor or before some person authorized by him the following oath of allegiance:

"I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or as the case may be)".

R.S.M., c. 141, s. 10.

Note: An oath of allegiance by member is required by sec. 128 of the B.N.A. Act, 1867.

By section 3 of the Interpretation Act, 1889 (Imperial) "oath" includes affirmation or declaration. Section 23(1) (32) of The Interpretation Act of Manitoba makes a similar provision.

#### **Senators, members of Parliament, and members of other Provincial Legislative bodies ineligible.**

**12** No person who is a member of the Senate or the House of Commons of Canada, or who is a member of the Legislative Council or the Legislative Assembly of any other province of Canada, is eligible to be nominated for, or elected as, a member of the Legislative Assembly, or is capable of sitting or voting in the assembly.

R.S.M., c. 141, s. 11.

#### **Certain office holders ineligible.**

**13** Except as hereinafter specially provided, no person accepting or holding any office, commission or employment, or performing any duty, in respect of which any salary, fee, payment, allowance, or emolument, is payable from the Crown in right of the province, is eligible to be nominated for, or elected as a member of, the Legislative Assembly; nor shall he sit or vote in the assembly during the time he holds the office, commission, or employment, or he is performing the duty, or the salary, payment, allowance, or emolument, is payable to him.

R.S.M., c. 141, s. 12; am.



## LEGISLATURE

**Exception respecting members of Executive Council.**

**14** Notwithstanding anything in this Act or any other Act, a member of the Executive Council whether in receipt of salary, allowance, fees or remuneration or not, is not ineligible to be nominated for, or elected as, a member of the Legislative Assembly; nor is he disqualified from sitting or voting in the assembly, if he is elected while he holds such an appointment, nor shall a member of the assembly who is appointed a member of the Executive Council, whether in receipt of salary, allowance, fees or remuneration or not, by reason only of the acceptance of the appointment, vacate his seat or be disqualified from sitting or voting in the assembly.

R.S.M., c. 141, s. 13; am.

Note: See The Executive Council Act.

**Exception respecting coroners and justices.**

**15** If he is not otherwise ineligible or disqualified, nothing in section 13 renders a medical examiner or chief medical examiner appointed under The Fatality Inquiries Act or a justice of the peace ineligible to be nominated for, or elected as a member of, the Legislative Assembly or disqualifies him from sitting or voting in the assembly.

R.S.M., c. 141, s. 14; am.; S.M., 1974, c. 68, s.1.

**Exception respecting Speaker and Deputy Speaker.**

**16** Nothing in section 13 disqualifies the Speaker or Deputy Speaker from sitting or voting in the Legislative Assembly.

R.S.M., c. 141, s. 15.

Note: Allowance for Speaker or Deputy provided by sec. 35 and 59(2).

**Acceptance of payments by members.**

**17** A member of the assembly may accept from the government any indemnity, allowance, salary and reimbursement for expenses authorized under this Act or The Executive Government Organization Act, and reimbursement approved by the Provincial Auditor for reasonable expenses incurred by the member in transacting public business pursuant to a resolution of the assembly, or have any or all of those expenses paid for him on his behalf by the government; and nothing in this Act disqualifies the member from sitting and voting in the assembly or subjects him to penalty for accepting the indemnity, allowance, salary or reimbursement or because those expenses have been paid for him on his behalf; but nothing in this section authorizes a member to accept appointment to a statutory board, commission or body the remuneration in respect of which is paid from the Consolidated Fund or to accept remuneration or reimbursement from the government in respect of any duties performed as a member of or on the direction of any statutory board, commission or body.

R.S.M., c. 141, s. 16; S.M. 1970, c. 101. s. 1.

**Persons contracting with government ineligible.**

**18** No person, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, holding or enjoying, undertaking or executing, any contract or agreement, expressed or implied, with or for the Crown in right of the province or with or for any officer of the Crown,



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is eligible to be nominated for, or elected as, a member of the Legislative Assembly or to sit or vote in the assembly.

R.S.M., c. 141, s. 17; S.M. 1978, c. 42, s. 1.

Note: Respecting contracts with members - See sec. 44 of The Manitoba Telephone Act. Respecting membership of board of Manitoba Hydro - See sec. 8 of The Manitoba Hydro Act.

### Exception under sec. 44 of Civil Service Act.

18.1 Notwithstanding anything in this Act, or any other Act of the Legislature, a person to whom leave of absence is granted under, and who complies with, section 44 of The Civil Service Act is not ineligible to be nominated for, or elected as, a member of the Legislature, nor is he disqualified, while he is on leave if absence under section 44 of The Civil Service Act, from sitting or voting in the assembly.

S.M. 1974, c. 68, s. 1.1.

### Exceptions.

19(1) Nothing in this Act renders any person ineligible to be nominated for, or elected as, a member of the Legislative Assembly, or disqualifies him from sitting or voting in the assembly by reason only of the person

- (a) being a shareholder or director of any corporation having a contract or agreement with the Crown in right of the province, except a corporation which undertakes a contract for the building of a public work;
- (b) being a contractor for the loan of money or of securities for the payment of money to the Crown in right of the province, after public competition, or purchasing or becoming the holder of securities of the province, on terms common to all persons;
- (c) entering into a contract with the government or a minister of the Crown or a department or branch of the government, or any Crown agency for the supply, provision, or sale to him of a utility, service, or article of merchandise administered, provided, or sold by the government, minister, department, branch, or agency; or having, before he was elected, entered into a contract to borrow money from The Manitoba Agricultural Credit Corporation or Manitoba Development Fund;
- (c.1) receiving or having received a benefit or service under any program which is carried on or undertaken by the government or an agency of the government and under which the same or similar benefits or services are offered and provided generally to other residents of the province, or entering or having entered into a contract with the government or an agency of the government under which he receives or is to receive a benefit or service offered and provided generally to other residents of the province under similar contracts under a program carried on or undertaken by the government or the agency of the government, if
  - (i) the person does not represent more than 1% of all persons who are provided with similar benefits or services or who have entered into similar contracts, and
  - (ii) the value of the benefits or services received by the person is less than 1% of the value of all similar benefits or services provided under the program or under similar contracts;

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- (d) not being an employee, servant, or agent of the Crown or of any Crown agency, receiving from his employer remuneration for services or out-of-pocket expenses the cost of which is defrayed, in whole or in part, directly or indirectly, from grants made to his employer from the Consolidated Fund with moneys authorized by an Act of the Legislature to be so paid and applied;
- (d.1) having been, before he was elected as a member, an employee of a Crown agency that is engaged in a commercial enterprise and covered by a collective agreement between that Crown agency and a bargaining agent for a unit of employees that included the person, continuing his employment with the Crown agency under the terms and conditions of the collective agreement;
- (e) without restricting the generality of clause (c),
  - (i) being an insured person under The Health Services Insurance Act; or
  - (ii) being an insured person under The Crop Insurance Act and receiving payments by reason thereof; or
  - (iii) being an insured person under The Manitoba Public Insurance Corporation Act;
- (f) receiving or having received or agreed to receive compensation in respect to any property taken or purchased by the Crown in right of the province under The Expropriation Act;
- (g) being proprietor of or otherwise interested in a newspaper or other periodical publication in which official notices or advertisements are inserted which appear in other newspapers or publications in the province, or which is subscribed for by the government or any department, branch, board, or commission thereof, unless the notices or advertisements or subscriptions are paid for at rates greater than usual rates;
- (h) being or becoming a party either as principal or surety to a bond given to Her Majesty under The Succession Duty Act;
- (i) being the holder from the Crown of a grazing, hay, or timber permit, or a campsite or other occupation permit, or of a grazing or campsite lease;
- (j) being the holder of a mining licence or lease, a permit or licence issued under The Fisheries Act or The Wildlife Act, or a certificate, licence, or permit under The Highway Traffic Act;
- (k) being an issuer of marriage licences, a division registrar or a deputy division registrar under The Vital Statistics Act, a person authorized to register motor vehicles and issue licences and permits under The Highway Traffic Act, a licensee under The Liquor Control Act, or the issuer of licences and permits under The Fisheries Act or The Wildlife Act, and paid fees in connection therewith;
- (l) being the holder of a certificate under Part VIII of The Highway Traffic Act or being a common carrier and transporting goods for the Crown and receiving compensation therefor;
- (m) receiving a commission for the collection of any tax imposed under an Act of the Legislature where he is required under that Act to collect the tax in the ordinary course of his business and the commission is received in conformity with that Act and the regulations made thereunder;
- (n) entering into an agreement, under any Act of the Legislature imposing a tax, for the collection of the tax, and receiving a commission pursuant to any such agreement, where he is required under that Act to collect the tax in the ordinary course of his business and the agreement and the commission are in conformity with that Act and the regulations made thereunder.



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- (o) entering into an agreement with The Manitoba Public Insurance Corporation to act as agent for that corporation in respect of, and receiving commissions for, the issuing and sale of insurance under The Manitoba Public Insurance Corporation Act

**General exception.**

19 (2) Nothing in this Act renders any person ineligible to be nominated for, or elected as, a member of the Legislative Assembly, or disqualifies him from sitting or voting in the Assembly, by reason of the person

- (a) having entered or entering contracts or agreement with or for the Crown in right of the province or an agency of the government in respect of matters not mentioned in subsection (1)
  - (i) if the aggregate of the moneys and value of consideration to be paid or passed to him under such contracts does not exceed \$500.00 in any year, and
  - (ii) if the moneys are remitted to the government or the agency; or
- (b) holding office, at the time of his nomination for, or election as, a member of the Legislative Assembly, as a member of a statutory board, commission or body the remuneration in respect of which is paid from the Consolidated Fund, or by reason of having accepted remuneration or reimbursement from the government in respect of any duties performed as a member of or on the direction of a statutory board, commission or body
  - (i) if the person does not act as a member of the statutory board, commission or body after the day fixed for nominations for the election for which he is nominated or at which he is elected, and
  - (ii) if he remits to the government all moneys which he received by way of remuneration or reimbursement in respect of any duties performed after the day on which the Writ of Election was issued for that election, as a member of or on the direction of the statutory board, commission or body;

and this subsection shall be deemed always to have been the law.

**Questions arising under this section.**

19 (3) Where a question arises as to whether subsection (1) or (2) applies in respect of a member of the assembly, the member or any other member of the assembly may refer the question to the Standing Committee of the Assembly on Privileges and Elections which shall determine the question and the determination of the committee is final and binding on all persons.

R.S.M., c. 141, s. 18; am. S.M., 1962, c. 37, s. 2; S.M., 1964 (2nd Sess.), c. 10, s. 52;

S.M. 1970, c. 101, s. 2; S.M. 1971, c. 80, s. 1;  
 S.M. 1974, c. 68, s. 2; S.M. 1976, c. 54, ss. 1-2;  
 S.M. 1978, c. 42, s. 2; S.M. 1978, c. 49, s. 61.

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### **Election of ineligible person void.**

**20** Where a person ineligible to be nominated for, or elected as, a member of the Legislative Assembly is nevertheless elected and returned as a member, his election and return is void.

R.S.M., c. 141, s. 19; am.

### **Seat vacant on disqualification.**

**21(1)** Where a member of the Legislative Assembly becomes disqualified from sitting or voting in the assembly under sections 12, 13, or 18, his election becomes void and his seat is vacated.

Am.

### **Idem.**

**21(2)** In any case mentioned in subsection (1) the vacancy shall be treated as one occurring through death.

### **Idem.**

**21(3)** Notwithstanding anything in this section, the person may be re-elected if he is eligible.

R.S.M., c. 141, s. 20; am.

### **Penalty for disqualified persons sitting in assembly.**

**22** Where a person ineligible to be nominated for, or elected as, a member of the Legislative Assembly or disqualified from sitting or voting in the assembly, sits or votes therein or continues to sit or vote, as the case may be, he is guilty of an offence and is liable, on summary conviction, to a fine of two hundred dollars for each and every day on which he so sits or votes.

R.S.M., c. 141, s. 21; am.

Note: Recovery of penalty under The Summary Convictions Act.

## VACATING OF SEATS

### **Resignation of member.**

**23** Any member of the Legislative Assembly may resign his seat,

- (a) by giving, in his place in the assembly, notice of his intention to resign, in which case, after the notice has been entered by the clerk of the assembly in the journals, the seat of the member thereupon becomes vacant; or
- (b) by addressing and causing to be delivered to the Speaker a declaration of his intention to resign, made in writing under his hand before two witnesses, which declaration may be so made and delivered either before or during a session of the Legislature, or in the interval between two sessions, and upon receipt thereof by the Speaker the seat of the member thereupon becomes vacant.

R.S.M., c. 141, s. 22; am.



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### **Resignation when no Speaker.**

**24** Where a member of the Legislative Assembly wishes to resign his seat, during or before a session of the Legislature, or in the interval between two sessions and there is then no Speaker, or the Speaker is absent from the province, or the member is himself the Speaker, he may address and cause to be delivered to any two members of the assembly the declaration mentioned in clause (b) of section 23; and upon the receipt thereof by the two members the seat of the member thereupon becomes vacant.

R.S.M., c. 141, s. 23; am.

### **Duty of Speaker or two members receiving resignation.**

**25** Upon receiving the notice of intention or the declaration the Speaker or the two members of the Legislative Assembly, as the case may be, shall forthwith address a request to the Lieutenant Governor in Council for the passing of an order in council for the filling of the vacancy under The Election Act.

R.S.M., c. 141, s. 24.

### **Notice of vacancy caused in any other way than by resignation.**

**26** Subject to section 73 of The Controverted Elections Act, in any case of a vacancy in the representation of an electoral division created in any other way than by resignation, any two members of the Legislative Assembly may give notice of the vacancy to the Lieutenant Governor in Council and request the passing of an order in council for the filling of the vacancy under The Election Act.

R.S.M., c. 141, s. 25.

### **Vacancy before first session of a Legislature.**

**27** If a vacancy of the kind mentioned in section 26 occurs subsequently to a general election and before the first meeting of the Legislature thereafter, the notice and request to the Lieutenant Governor in Council may be given by two members of the Legislative Assembly of whose election the Clerk of the Executive Council has had due notice.

R.S.M., c. 141, s. 26.

### **Vacancies to be filled within one year.**

**28** No vacancy in the representation of an electoral division shall remain unfilled for more than one year.

R.S.M., c. 141, s. 27.

## THE SPEAKER

### **Election of Speaker.**

**29(1)** The Legislative Assembly, on its first assembling after a general election, shall proceed with all practicable speed to elect one of its members to be Speaker.

### **Election when vacancy.**

**29(2)** In case of a vacancy happening in the office of Speaker by death, resignation, or otherwise, the assembly shall proceed with all practicable speed to elect another of its members to be Speaker.

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**Presiding officer.**

**29(3)** The Speaker shall preside at all meetings of the assembly.

R.S.M., c. 141, s. 28.

Note: Similar provisions in sections 44-46 of the B.N.A. Act, 1867, made applicable to province by sec. 21 of The Manitoba Act, 1870 (Canada).

**Deputy Speaker.**

**30(1)** The Legislative Assembly may elect a Deputy Speaker, and in any case where the Speaker, from illness or other cause, finds it necessary to leave the chair during any part of the sittings of the assembly in any day, he may call upon the Deputy Speaker, or in his absence upon any member of the assembly to take the chair and act as Speaker during the remainder of the day, unless the Speaker himself resumes the chair before the close of the sittings of that day.

**Acting as Speaker.**

**30(2)** The Deputy Speaker or member so called upon shall take the chair and act as Speaker accordingly.

R.S.M., c. 141, s. 29.

Note: See sec. 47 of the B.N.A. Act, 1867.

**Deputy Speaker acting in absence of Speaker.**

**31(1)** Where the Legislative Assembly is informed by the clerk at the table, of the absence of the Speaker, the Deputy Speaker, if present, shall take the chair and shall perform the duties and exercise the authority of the Speaker in relation to all proceedings of the assembly until the meeting of the assembly on the next sitting day, and so on from day to day on the like information being given to the assembly, until the assembly otherwise orders.

**Duration of power of deputy.**

**31(2)** Where the assembly adjourns for more than twenty-four hours, the Deputy Speaker shall continue to perform the duties and exercise the authority of the Speaker for twenty-four hours only after the adjournment.

R.S.M., c. 141, s. 30.

**When Speaker and Deputy Speaker both absent.**

**32** Where the Legislative Assembly is informed by the clerk at the table of the absence of the Speaker and the Deputy Speaker, the assembly may elect a member to take the chair and act as Speaker for that day.

R.S.M., c. 141, s. 31.

**Validation of proceedings.**

**33** Where, at any time during a session of the Legislative Assembly, the Speaker is absent from the assembly, and the Deputy Speaker or a member thereupon performs the duties and exercises the authority of the Speaker as hereinbefore provided, or pursuant to the rules or other order, or a resolution of the assembly, every act done and proceeding taken in or by the assembly, in the exercise of its powers and authority, is as valid and effectual as if the Speaker himself were in the chair.

R.S.M., c. 141, s. 32; am.

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### **Validation of acts of Deputy Speaker.**

**34** Every act done, and warrant, order, or other document issued, signed, or published, by the Deputy Speaker or member acting as hereinbefore provided in relation to any proceedings of the Legislative Assembly, or which under any statute would be done, issued, signed, or published, by the Speaker if then present and acting, has the same effect and validity as if it had been done, issued, signed or published, by the Speaker himself.

R.S.M., c. 141, s. 33; am.

### **Allowance for Deputy Speaker.**

**35** Repealed S.M. 1974, c. 68, s. 3.

## POWERS AND PRIVILEGES OF ASSEMBLY

### SUMMONING WITNESSES AND TAKING EVIDENCE

#### **Power to compel attendance of witnesses.**

**36** The Legislative Assembly may, at all times, command and compel the attendance before it or any committee thereof, of such persons, and the production of such papers and things, as the assembly or committee may deem necessary for any of its proceedings or deliberation.

R.S.M., c. 141, s. 35.

#### **Warrant for attendance of witnesses.**

**37(1)** Where the Legislative Assembly requires the attendance of any person before the assembly or before any committee thereof, the Speaker may issue a warrant or subpoena to the person named in the order of the assembly, requiring the attendance of the person before the assembly or a committee thereof and the production of such papers and things as are ordered.

#### **Form of warrant.**

**37(2)** Every warrant may command the aid and assistance of all sheriffs, bailiffs, constables, and others, and any refusal or failure to give aid and assistance, when required, is a contravention of this Act.

Am., R.S.M., c. 141, s. 36; am.

#### **Examination on oath.**

**38(1)** The Legislative Assembly may examine on oath any witness at the bar of the assembly.

#### **Administration of oath.**

**38(2)** The oath may be administered by the Speaker.

R.S.M., c. 141, s. 37.



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### Power of committees to examine on oath.

**39(1)** Any standing or select committee of the Legislative Assembly to which any bill, or other matter or cause, has been referred by the assembly, may examine witnesses upon oath upon matters relating to the bill, matter or cause.

### Administration of oath.

**39(2)** The chairman or any member of the committee may administer the oath to any witness.

R.S.M., c. 141, s. 38.

### Extra-mural examination of witnesses.

**40** Where the evidence of any person is required in connection with any matter that is the subject of inquiry by the Legislative Assembly or any committee thereof, and it is necessary to take his evidence outside the assembly or committee, the Speaker, when thereunto authorized by a resolution of the assembly, may make an order for the examination, upon oath before any person, at any place, of such person.

R.S.M., c. 141, s. 39.

### Assembly, court of record.

**41** The assembly is a court of record and possesses all the rights, powers, and privileges, of a court of record for the purposes of sections 36 to 39.

R.S.M., c. 141, s. 40.

## JURISDICTION OF ASSEMBLY

### Judicial powers of assembly in certain matters.

**42(1)** The Legislative Assembly has the rights, powers, and privileges, of a court for the purpose of summarily inquiring into and punishing, as breaches of privilege or as contempt of court, the acts, matters, and things, following:

- (a) Assaults, insults to, or libels upon, members of the assembly during the session of the Legislature.
- (b) Obstructing, threatening, or attempting to force or intimidate, members of the assembly.
- (c) The offering of a bribe to, or acceptance of, a bribe by, any member of the assembly to influence him in his proceedings as such, or the offering of any compensation to, or acceptance of any compensation by, any member for, or in respect of the promotion of any bill, resolution, matter, or thing, submitted to, or intended to be submitted to, the assembly or any committee thereof.
- (d) Assaults upon, or interference with, officers of the assembly, while in the execution of their duty.
- (e) Tampering with any witness in regard to evidence to be given by him before the assembly or any committee thereof.
- (f) Presenting to the assembly or any committee thereof any forged or falsified document with intent to deceive the assembly or committee.
- (g) Forging, falsifying, or unlawfully altering, any of the records of the assembly, or of any committee thereof, or any document or petition presented or filed, or intended to be presented or filed, before the assembly or committee, or the setting or subscribing by any person, of the names of any other person to any document or petition with intent to deceive.
- (h) Giving false evidence, or prevaricating or otherwise misbehaving in giving or refusing to give evidence or produce papers, before the assembly or any of its committees.



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- (i) Disobedience to subpoenas or warrants issued under the authority of this Act to compel the attendance of witnesses before the assembly or any of its committees.
- (j) The bringing of any civil action or prosecution against, or the causing or effecting of any arrest or imprisonment of, any member of the assembly, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion, or otherwise, or by reason of anything said by him before the assembly.
- (k) The causing or effecting of the arrest, detention, or molestation, of any member of the assembly for any debt or cause whatever of a civil nature, during any session of the Legislature.

Am., S.M., 1956, c. 69, s. 12; am.

### **Necessary and incidental powers.**

**42(2)** For the purposes of this Act, the assembly possesses all such powers and jurisdiction as may be necessary or expedient for inquiring into, judging, and pronouncing upon, the commission or doing of any of the acts, matters, or things, and awarding and carrying into execution the punishment thereof, provided for by this Act.

Am., R.S.M., c. 141, s. 41; am.

### **Penalty for breach of section 41.**

**43** Every person who, upon such an inquiry, appears to have committed or done any of the acts, matters, or things, mentioned in section 42, in addition to any other penalty or punishment to which he is by law subject, is liable to an imprisonment for such time as is determined by the assembly.

R.S.M., c. 141, s. 42; am.

### **Warrant of committal upon imprisonment.**

**44(1)** Where the Legislative Assembly declares that any person has been found guilty of any breach of privilege or of a contempt in respect of the acts, matters, and things, mentioned in section 42, and directs that the person be kept and detained in the custody of the Sergeant-at-Arms attending the assembly, the Speaker shall issue his warrant to the Sergeant-at-Arms to take the person into custody in accordance with the order of the assembly.

### **Speaker's warrant.**

**44(2)** Where the assembly directs that the imprisonment be in a correctional institution in the Eastern Judicial District, the Speaker shall issue his warrant to the Sergeant at Arms and to the governor or keeper of the correctional institution, commanding the Sergeant at Arms to take the person into custody and to deliver him to the governor or keeper to receive and keep and detain him in custody in accordance with the order of the assembly.

R.S.M., c. 141, s. 43; am.

### **Assembly's decision final.**

**45** The determination of the Legislative Assembly upon any proceedings under this Act is final and conclusive.

R.S.M., c. 141, s. 44; am.

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### IMMUNITIES AND PRIVILEGES

#### **No liability for act done under authority of assembly.**

**46** No person is liable in damages or otherwise for any act done under the authority of the Legislative Assembly and within its legal power or under or by virtue of any warrant or subpoena issued under that authority.

R.S.M., c. 141, s. 45; am.

#### **Protection of members from actions.**

**47** No member of the Legislative Assembly is liable to any civil action or prosecution, arrest, imprisonment, or damages,

(a) by reason of any matter or thing brought by him by petition, bill, resolution, motion, or otherwise; or

(b) by reason of anything said by him before the assembly or any committee thereof.

R.S.M., c. 141, s. 46; am.

#### **Except for breach of Act member immune from civil arrest during session.**

**48** Except for a contravention of this Act, no member of the Legislative Assembly is liable to arrest, detention, or molestation, for any debt or cause whatever of a civil nature during any session of the Legislature.

R.S.M., c. 141, s. 47; am.

#### **Members, officers, and witnesses, exempt from jury service during session.**

**49** All members, officers, and employees, of the Legislative Assembly and all witnesses summoned to attend before the assembly or any committee thereof, are exempt from attending or serving as jurors before any court in the province during any session of the Legislature.

R.S.M., c. 141, s. 48; am.

## PROHIBITIONS

#### **No member to accept compensation for services in proceedings before assembly.**

**50** No member of the Legislative Assembly shall receive, or agree to receive, any compensation, directly or indirectly, for services rendered or to be rendered to any person, either by himself or another, in relation to any bill, resolution, proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter, before the assembly or a committee thereof, or in order to influence or to attempt to influence any member of the assembly.

R.S.M., c. 141, s. 49.

#### **No barrister partner of member to receive compensation for services in certain cases.**

**51** No barrister, solicitor, or attorney who, in the practice of his profession, is a partner of any member of the Legislative Assembly, shall accept or receive, either directly or indirectly, any fee, compensation, or reward, for any of the things mentioned in section 50.

R.S.M., c. 116, s. 51.



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### **Penalty for violation of sec. 50 or 51.**

**52** Any person who violates section 50 or 51 is guilty of an offence and is liable, on summary conviction, to a fine of five hundred dollars.

R.S.M., c. 141, s. 51; am.

Note: See The Summary Convictions Act for the recovery of penalty.

### **Vacating seat of members contravening section 50.**

**53(1)** Where a member of the Legislative Assembly is convicted under section 52, or where by resolution of the assembly it is declared that a member thereof has been guilty of a contravention of section 50, the seat of the member thereupon becomes vacant and the election and return of the member is thereupon void.

Am.

### **Disqualification.**

**53(2)** The member is ineligible to be nominated for, or elected as a member of, the assembly, and is incapable of sitting or voting in the assembly, during the then existing or the next succeeding Legislature.

Am., R.S.M., c. 141, s. 52.

Note: Notification of vacancy and procedure - See section 25.

## RESPECTING ACTIONS

### **Protection to person publishing report.**

**54(1)** Where a civil proceeding against any person is commenced for or in respect of the publication of any report, paper, votes, or proceedings, of the Legislative Assembly published by the person by or under the authority of the assembly, the person may lay before the court in which the proceeding is pending a certificate under the hand of the Speaker, or of the clerk of the assembly, stating that the report, paper, votes, or proceedings, in respect to which the proceedings or prosecution was commenced was published by the person by order or under the authority of the assembly, and the certificate shall be verified by an affidavit.

Am.

### **Stay of proceedings.**

**54(2)** The court shall thereupon immediately stay the proceeding or prosecution, and it shall be finally put an end to, determined, and superseded.

R.S.M., c. 141, s. 53; am.

### **Protection to person in publishing copy of report.**

**55(1)** Where a civil proceeding against any person is commenced for or in respect of the publication of a copy of any report, paper, votes, or proceedings, of the Legislative Assembly, the defendant at any stage of the proceedings may lay before the court the report, paper, votes, or proceedings, and the copy, with an affidavit verifying the report, paper, votes, or proceedings, and the correctness of the copy.

### **Stay of proceedings.**

**55(2)** The court shall thereupon immediately stay the proceeding or prosecution, and it shall be finally put an end to, determined, and superseded.

R.S.M., c. 141, s. 54.

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**Bona fide publication a defence.**

**56** In any civil proceeding against any person for publishing any extract from, or abstract of, any report, paper, votes, or proceedings, of the Legislative Assembly, if the defendant shows that the extract or abstract was published bona fide and without malice it is a good defence to the proceeding.

R.S.M., c. 141, s. 55; am.

**Journals of House as evidence.**

**57** A copy of the journals of the Legislative Assembly, printed or purporting to be printed by order of the assembly, shall be admitted as evidence of the journals by all courts, justices, and others, without any proof being given that the copies were so printed.

R.S.M., c. 141, s. 56.

## SAVING CLAUSE

**Act not to abridge rights and privileges.**

**58** Except so far as is provided in this Act, nothing herein deprives the Legislative Assembly, or any committee or member thereof, of any rights, immunities, privileges, or powers, that the assembly, committee, or member might, but for this Act, have been entitled to exercise or enjoy.

R.S.M., c. 141, s. 57.

## INDEMNITY OF MEMBERS

59-64:

Note: These articles, which deal with the indemnity of members of the Legislative Assembly, are not reproduced.

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Note: Ces articles, qui traitent des diverses indemnités dues aux membres de l'Assemblée législative, ne sont pas reproduits.

## GENERAL

**Vacancy in seats not to invalidate proceedings of assembly.**

**65** No omission or failure to elect a member or members in or for any electoral division, and no vacating of the seat or voiding of the election of any member or members, shall be deemed or taken to make the Legislative Assembly incomplete, or to invalidate any proceedings thereof, or to prevent the assembly from meeting and dispatching business, so long as there is a quorum of members present.

R.S.M., c. 141, s. 62; S.M. 1978, c. 42, s. 6.

**Debates to be grave and orderly.**

**66** To the end that all the debates in the Legislative Assembly be grave and orderly, and that all interruptions be prevented,

- (a) if any member of the assembly makes any disturbance or acts in a disorderly manner whilst any member is orderly debating, or whilst any bill, order or other matter is being read or dealt with, the Speaker shall call upon the member by name making such disturbance;



## LEGISLATURE

- (b) if the member does not thereupon refrain from the disturbance or disorderly conduct, and does not forthwith make due amends to the assembly therefor, the Speaker shall thereupon censure the member and shall direct him to be taken into custody by the Sergeant-at-Arms and detained in such custody for such period as the Speaker orders;
- (c) if the assembly is in committee of the whole when any such disorder or disturbance takes place, the committee shall forthwith rise, report progress and ask leave to sit again, and the chairman shall inform the Speaker of the fact of the disorder or disturbance, whereupon the Speaker shall deal therewith in the manner hereinbefore provided for as fully and effectually and in all respects as if the disorder or disturbance had taken place while he was occupying the chair.

R.S.M., c. 141, s. 63.

### Expenses of assembly.

**66.1** All expenses incurred in connection with the conduct of the business of the assembly, including expenses of meetings of any committee of the assembly, shall be paid from and out of the Consolidated Fund with moneys authorized under an Act of the Legislature to be so paid and applied.

S.M. 1970, c. 101, s. 4.

### Life of committees.

**66.2 (1)** Each standing committee of the assembly continues as a committee of the assembly until dissolution of the assembly and each other committee of the assembly, whether select or special, appointed and constituted by the assembly continues as a committee of the assembly until

- (a) dissolution of the assembly; or
- (b) the first sitting of the session immediately following the session at which the committee was constituted; or
- (c) the committee is dissolved by resolution of the assembly;

whichever occurs first; and any committee, whether standing, select or special, may meet and conduct its business during recess and after prorogation as long as it continues as a committee.

**66.2 (2)** A report of a committee of the assembly may be received in the assembly after the committee has ceased to exist.

### Filling vacancies on committees.

**66.2 (3)** Where, during a recess or after prorogation, a vacancy occurs on a committee of the assembly, whether standing, select or special, by reason of a member of the committee dying, resigning his seat in the assembly, becoming disqualified from sitting or voting in the assembly, or resigning from the committee under subsection (4), the committee may fill the vacancy by a majority vote of the committee, and the committee shall report its action to the assembly at the next sitting of the Legislature.

### Resigning from committee.

**66.2 (4)** A member of a committee of the assembly, whether standing, select or special, may resign from the committee

- (a) during a recess or after prorogation, by delivering notice of his resignation in writing to the chairman of the committee or the clerk of the house; and
- (b) at other times by delivering notice of his resignation to the speaker or deputy speaker.

## LEGISLATURE

**Referral of matter to committee by Lieutenant Governor in Council.**

66.2 (5) The Lieutenant Governor in Council may refer a matter to a committee of the assembly, whether standing, select or special, for consideration and report, and the report of the committee with respect to the matter shall be made to the assembly and to the Lieutenant Governor in Council.

S.M. 1970, c. 101, s. 4; S.M. 1974, c. 68, s. 9;

S.M. 1976, c. 54, ss. 6-7; S.M. 1978, c. 42, s. 7.

**Report on salaries etc.**

66.3 (1) Each year within ninety days after the end of the fiscal year of the government if the Legislature is then in session, or, if the Legislature is not then in session, within fifteen days after the beginning of the next ensuing session, the Minister of Finance shall lay before the assembly a statement showing the amounts paid from the Consolidated Fund during that fiscal year to each person who has been a member of the assembly during that fiscal year by way of indemnities, salaries, allowances or reimbursement for expenses, in accordance with this Act.

**Report of income from Crown agencies.**

66.3 (2) Each year within thirty days of the end of the fiscal year of the government each member who has received any remuneration or expenses during the previous fiscal year of the government in respect of duties performed as a member of a Crown agency or a member of the board of management or board of directors of a Crown agency shall report the amount of the remuneration and expenses received during that previous fiscal year to the Minister of Finance; and the Minister of Finance shall indicate the amounts reported to him under this subsection in the statement that he lays before the Assembly under subsection (1).

S.M. 1970, c. 101, s. 4; S.M. 1971, c. 80, s. 7.

**66.4-87:**

Note: These articles are not reproduced. Ss. 66.4 to 66.7 deal with the mailing privileges for the members of the Assembly, the use of government air service by them and the allowance for secretarial and research assistance. Ss. 67 to 87, which form Part II of the act, deal with the retirement allowances for the members of the Assembly.

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Note: Ces articles ne sont pas reproduits. Les articles 66.4 à 66.7 portent sur l'envoi de courrier par les membres de la législature aux frais du gouvernement de la province, sur l'utilisation par eux du service aérien gouvernemental et sur l'allocation qui leur est versée pour des travaux de recherche et de secrétariat. Quant aux articles 67 à 87 qui constituent la Partie II de la loi, ils traitent des allocations de retraite des membres de l'assemblée.





## REPRESENTATION

### Introduction

Members of the Legislative Assembly have to be elected pursuant to the existing legislation of Manitoba relating to representation. A large portion of this legislation deals with the electoral procedure and thus extends beyond the scope of constitutional law. This chapter will summarize the main characteristics of the system of representation and the participation of the population of Manitoba in the electoral process, providing a brief description of each statute on this question. Except when specified, the statutes described below are not reproduced in this collection:

1. Elections Act, S.M. 1980, c. 67, C.C.S.M., c. E30.  
Note: This statute, of which extracts only are reproduced below, contains the most important elements of the electoral system of Manitoba. Among the provisions not reproduced here are those dealing with corrupt practices.
2. Electoral Divisions Act, R.S.M. 1970, c. E40, as amended.  
Note: This statute provides for the establishment of the Electoral Divisions Boundaries Commission. This commission is responsible for the revision of boundaries of electoral divisions, and reports its recommendations to the Lieutenant Governor. The schedule of this statute describes precisely the boundaries of each of the 57 electoral divisions of the province.
3. Elections Finances Act, S.M. 1980, c. 68, C.C.S.M., c. E32.  
Note: This statute of 57 sections regulates election finances of political parties and candidates in the election, and limits political advertising expenditures during the election period. It establishes the Elections Commission which is responsible for administering this act. This statute requires the registration with the Commission of any political party or candidate for an election who wants to issue a receipt for income tax



purposes of money received as contributions and donations. Every chief financial officer of a political party or a candidate in an election has to file with the Commission various statements specified by the statute, within a prescribed period. Various penalties are specified for offences under the act, and only the Commission is empowered to institute proceedings to prosecute anyone for an offence under this act.

4. Controverted Elections Act, R.S.M. 1970, c. C210.

Note: This statute defines the procedure to follow before the courts in the case of a controverted election of a member to the Legislative Assembly. This action is introduced by an election petition.

Selected references:

- Donnelly, Murray S., The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p. (Canadian Government Series, 14). See especially pp. 46-85.
- Bellamy, David J., and others, The Provincial Political Systems, Comparative Essays, Toronto, Methuen, 1976, 394 p. See Chapter 2, pp. 147-196: Election Systems; Election Expenses; and Elections.

## LA REPRÉSENTATION

### Introduction

Les membres de l'Assemblée législative doivent être élus en conformité de la législation manitobaine existante en matière de représentation. Une partie importante de cette législation porte sur la procédure proprement dite et déborde par conséquent le cadre du droit constitutionnel. C'est pourquoi on se limite, dans le présent chapitre, à dégager les principales caractéristiques du système de représentation et de consultation de la population manitobaine en résumant brièvement le contenu de chaque loi portant sur cette question. Sauf indication contraire, les lois ci-après résumées ne sont pas reproduites dans la présente collection:

1. Elections Act, S.M. 1980, c. 67; C.C.S.M., c. E30

Note: Cette loi, dont on reproduit ci-après les plus importantes dispositions, définit les caractéristiques fondamentales du système électoral du Manitoba. Parmi les dispositions non reproduites, signalons celles qui ont trait aux manoeuvres frauduleuses.

2. Electoral Divisions Act, R.S.M. 1970, c. E40 et ses modifications

Note: Cette loi prévoit l'établissement d'une commission sur la délimitation des circonscriptions électorales. Cette commission est responsable de la révision des limites des districts électoraux et doit faire rapport à ce sujet au lieutenant-gouverneur. L'annexe de cette loi décrit précisément les limites de chacun des 57 districts électoraux de la province.

3. Elections Finances Act, S.M. 1980, c. 68; C.C.S.M., c. E32

Note: Cette loi de quelque 55 articles régit le financement des partis politiques et des candidats à une élection et limite les dépenses faites à des fins publicitaires en période électorale. Elle établit la commission des élections responsable de l'application de la loi. Elle soumet à la formalité de l'enregistrement auprès de la commission tout parti politique et candidat désireux d'émettre des reçus d'impôt pour la valeur des contributions et donations en argent qu'il recueille. Il appartient au directeur des finances de chaque parti politique et de chaque candidat de produire à la commission les divers rapports prévus par la loi dans les délais qui

y sont impartis. Diverses sanctions pénales sont envisagées en cas d'infraction à la loi et seule la commission est habilitée à intenter les poursuites en vertu de cette loi.

4. Controverted Elections Act, R.S.M. 1970, c.C210

Note: Cette loi définit la procédure à suivre devant les tribunaux judiciaires en matière de contestation d'élection d'un candidat à l'Assemblée législative. Cette contestation est introduite par voie de pétition d'élection.

Sources choisies

Donnelly, M.S., The Government of Manitoba, Toronto, University of Toronto Press, 1963, 185 p. Consulter pp. 46-85.

Bellamy, David, J. et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, 394 p. Consulter le chap. II, pp. 147-196: Election Systems; Election Expenses; Elections.



## ELECTIONS ACT\*

S.M. 1980, c. 67, C.C.S.M., c. E30

Note:

This statute contains some 180 sections. Only provisions dealing with the following matters are reproduced below:

- a) Ineligibility to be election officers: section 11(1);
- b) Qualifications and disqualifications of electors or voters: sections 3, 31, 32(1), and 82;
- c) Qualification and nomination of candidates: sections 52 to 53(3);
- d) Employees time for voting: section 89;
- e) Vote by mail: section 101(1);
- f) Secrecy of the voting: sections 107 to 110;
- g) Declaration of election: section 127;
- h) Publication of results: section 142; and
- i) Effect on elections of offences and irregularities: sections 171 to 174.

In addition to this statute, one should also consult the Legislative Assembly Act, containing provisions concerning ineligibility of some persons to be members of the Legislative Assembly. It would also be useful to consult regulations issued in pursuance of this statute, listed in the cumulative index of Regulations in Force, and in the Index to Manitoba Regulations of the Manitoba Gazette.

\*This statute is not in force yet.

ELECTIONS ACT\*

S.M. 1980, c. 67; C.C.S.M., c. E30

Note:

Cette loi renferme quelque 180 articles. Seules sont reproduites les dispositions portant sur les questions suivantes:

- a) l'inhabilité des personnes à exercer les fonctions d'officiers d'élection: art. 11(1)
- b) la qualité d'électeur et de voteur: art. 3, 31, 32(1), 82
- c) Les qualifications requises pour être candidat et la mise en nomination: art. 52-53(3)
- d) le temps alloué aux employés pour voter: art. 89
- e) le vote par la poste: art. 101(1)
- f) le secret du vote: art. 107-110
- g) la déclaration d'élection: art. 127
- h) les résultats du scrutin et leur publication: art. 142
- i) certaines sanctions en cas de corruption électorale: art. 171-174

Outre la présente loi, il y a lieu de consulter le Legislative Assembly Act qui contient des dispositions sur l'inéligibilité de certaines personnes à être membres de l'Assemblée législative. Il peut être également utile de consulter les règlements établis en vertu de la présente loi et signalés dans l'index cumulatif Regulations in Force et dans l'Index to Manitoba Regulations du Manitoba Gazette.

\* Cette loi n'était pas encore en vigueur au moment d'aller sous presse.

## THE ELECTIONS ACT.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

. . . . .

### British subjects deemed Canadian citizens.

**3** For the purposes of this Act, every British subject shall be conclusively deemed to be a Canadian citizen.

S.M. 1980, c. 67, s. 3.

. . . . .

## ELECTION OFFICERS

### Who may not be election officers.

**11 (1)** None of the following persons shall be appointed or act as an election officer or as an enumerator:

- (a) Members of the Executive Council.
- (b) Members of the Parliament of Canada or of the assembly.
- (c) Judges of any court of Canada or any provincial court, or justices of the peace or magistrates.
- (d) Persons who have at any time been found guilty by a competent court or tribunal of an election offence or who have been convicted by a competent court of an offence or dereliction of duty in violation of this Act or of any other Act previously in force in this province relating to elections.
- (e) Persons convicted of an indictable offence within the 5 years immediately preceding the issue of the writ of election or who has served a term of imprisonment for an indictable offence that ended within the 5 years immediately preceding the issue of the writ of election.

. . . . .

### Persons disqualified from voting.

**31** In addition to persons disqualified from voting at provincial elections under this or any other Act of the Legislature, the following persons are disqualified from voting in an election and their names shall not be placed on a voter's list:

- (a) Judges of the Court of Appeal, of the Court of Queen's Bench and of a county court and persons appointed as full-time Provincial Judges under The Provincial Judges Act.
- (b) Persons who are patients in mental hospitals or institutions for mental retardates.
- (c) Persons who have been declared to be mentally disordered by an order of the Court of Queen's Bench made under The Mental Health Act and whose custody has been committed to a committee under that Act.
- (d) Persons who are in gaols, prisons or places of detention serving a sentence imposed as punishment for an offence under the law.

S.M. 1980, c. 67, s. 31.



## ELECTIONS

### Qualification for voter's list.

**32 (1)** Subject to section 31, every person is entitled to have his or her name placed on a voter's list for an election if the person

- (a) is a Canadian citizen;
- (b) is of the full age of 18 years or will attain that age on or before the polling day for the election; and
- (c) has resided in Manitoba for at least 6 months prior to polling day at the election.

.....

## NOMINATION

### Qualification of candidate.

**52** Subject to sections 13 to 19 of The Legislative Assembly Act, a person is qualified and eligible to be nominated as a candidate and to be elected as a member of the assembly at an election and, if elected, to sit and vote therein, if

- (a) he is at least 18 years of age on polling day for the election;
- (b) he is a Canadian citizen;
- (c) he has resided in Manitoba for at least 1 year prior to polling day at the election;
- (d) he is not acting as an election officer, revising officer or enumerator, under this Act in respect of the election;
- (e) he has not become under any law incapacitated from sitting in the assembly or in the Legislature of any province of Canada or in the House of Commons of Canada on account of having been found guilty of a practice or act which would constitute an election offence if practised or committed in respect of an election under this Act; and
- (f) he is not disqualified from voting at the election under section 31.

S.M. 1980, c. 67, s. 52.

### Nomination paper.

**53 (1)** Any 100 or more persons eligible to vote in an election in an electoral division may nominate a candidate in the election by signing and causing to be filed with the returning officer, at any time after the date of the writ of election and before one o'clock in the afternoon of the day fixed for the close of nominations, a nomination paper in the prescribed form.

### Requirements for validity.

**53 (2)** A nomination paper is not valid and shall not be acted upon by the returning officer unless

- (a) it is accompanied by the consent in writing of the person nominated and directions as to the names, or any contraction or abbreviation of his name, or nickname, he wishes used on the ballot papers in the election;
- (b) it states an address within Manitoba at which legal processes, notices or other documents issued or to be served, either under this Act or any Act relating to elections to the assembly, may be served upon the candidate;
- (c) it sets out the appointment, name and address of the official agent of the candidate over the signature of the candidate; and

ELECTIONS

- (d) it is accompanied by the consent in writing of the person appointed official agent of the candidate to his appointment.

Endorsation of party.

53 (3) The returning officer of an electoral division shall not recognize a candidate in an election in an electoral division as the candidate of a registered political party unless he receives with the nomination paper or before the expiration of 24 hours after the close of nominations in the election, a written declaration from the registered political party signed by the appropriate officers thereof declaring that the registered political party endorses the candidate as its candidate in the election.

.....

VOTERS

Persons entitled to vote.

- 82 Every person whose name is on the voters' list for a polling subdivision in an electoral division may vote in an election at the polling place for that polling subdivision if
- (a) he has not voted at an advance poll or at any other polling place in the election;
  - (b) he has not voted in an election in another electoral division that has the same polling day;
  - (c) where so required, he takes the oath to be taken by a voter in the prescribed form; and
  - (d) he has not obtained a certificate from the returning officer enabling him to vote at some other poll at which he is employed or, having obtained such a certificate, he delivers it to the deputy returning officer unused to be cancelled.

S.M. 1980, c. 67, s. 82.

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Employees time for voting.

89 (1) Every employee who is entitled to vote at an election shall, while the polls are open on polling day at the election, have 3 consecutive hours for the purpose of voting and if the hours of his employment do not allow for 3 consecutive hours for that purpose, his employer shall allow the employee, at the convenience of the employer, such additional time for voting as may be necessary to provide 3 consecutive hours for that purpose and shall not reduce or make any deduction from the pay of the employee or impose or exact any penalty from him by reason of the employee's absence from work during the 3 consecutive hours allowed to him.

Offence and penalty.

89 (2) An employer who, directly or indirectly, refuses to grant or in any way interferes with the granting to any voter in his employ of the 3 consecutive hours for voting as provided in subsection (1) or otherwise contravenes subsection (1) is guilty of an offence and liable, on summary conviction, to a fine in the case of an individual not exceeding \$200.00 and in the case of a corporation not exceeding \$500.00.

S.M. 1980, c. 67, s. 89.

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## ELECTIONS

### **Application by incapacitated voter to mail ballot.**

**101 (1)** Where a voter is unable to go in person to the polling place or an advance poll because he is incapacitated for any physical cause, he may apply in writing to the returning officer to vote at the election by mail.

.....

### **No person compelled to disclose vote.**

**107 (1)** A person who has voted shall not, in any legal proceeding questioning the election or return, or in any other legal proceeding, be compelled to state for whom he voted.

### **No person to induce voter to disclose vote.**

**107 (2)** No person shall directly or indirectly induce or attempt to induce a voter to show his ballot paper after he has marked it so as to make known to any person the name of the candidate for whom he has voted.

S.M. 1980, c. 67, s. 107.

### **Voter not to be interfered with.**

**108** No person shall interfere, or attempt to interfere, with a voter marking his ballot or, except as herein otherwise permitted, attempt to obtain at the polling place information as to the candidate for whom a voter is about to vote or has voted.

S.M. 1980, c. 67, s. 108.

### **Voter not to show ballot.**

**109** Except in the case of a voter who is incapacitated or unable to read and who requires assistance in voting, a voter shall not show his ballot paper when marked to any person so as to allow the name of the candidate for whom he voted to be known nor shall he ask for or receive assistance from any person in the polling place in marking his ballot.

S.M. 1980, c. 67, s. 109.

### **Maintaining secrecy.**

**110 (1)** Every person attending a polling place or a counting of votes shall maintain and aid in maintaining the secrecy of the voting.

### **Not to state how voter voted.**

**110 (2)** No person shall communicate any information obtained at a polling place as to the candidate for whom a voter at the polling place is about to vote or has voted.

S.M. 1980, c. 67, s. 110.

.....



## ELECTIONS

### Declaration of election.

**127** If on the totalling of the votes for each candidate in the electoral division the returning officer finds that the number of votes for the candidate with the most votes exceeds the number of votes for each other candidate by more than 50 votes, he shall, at the place, day and hour appointed in the proclamation declare that candidate to be elected.

S.M. 1980, c. 67, s. 127.

. . . . .

## PUBLICATION OF RESULTS

### Notice and publication of return.

**142 (1)** The Chief Electoral Officer shall, on receiving the return of a member elected to the assembly from the returning officer, give notice to the Lieutenant Governor and the Clerk of the Assembly of

- (a) the receipt of the return and the name of the returning officer who made it;
- (b) the name of the member elected;
- (c) the name of every other candidate at the election;
- (d) the number of names on the voters' lists of the electoral division for which the member is elected;
- (e) the number of ballot papers cast at the election;
- (f) the number of rejected ballot papers; and
- (g) the number of votes for each candidate in the valid ballots cast;

and shall publish a copy of the notice in the Manitoba Gazette.

### Publication of detailed returns.

**142 (2)** The Chief Electoral Officer shall cause to be published, within 6 months after the polling day at an election, a book containing poll by poll results of the election.

S.M. 1980, c. 67, s. 142.

. . . . .

## EFFECT ON ELECTIONS OF OFFENCES AND IRREGULARITIES

### Election offence by candidate or official agent.

**171 (1)** Where a court hearing a petition under The Controverted Elections Act determines and reports that an election offence has been committed by a candidate or his official agent, whether with or without the actual knowledge and consent of the candidate, the election of the candidate, except as provided in subsection (2), is void.

### Where election not voided.

**171 (2)** Where a court hearing a petition under The Controverted Elections Act determines that an official agent of a candidate was guilty of an election offence that would otherwise render the election void and further finds that

- (a) no election offence was committed at the election by the candidate personally and that the election offence of the official agent was committed contrary to the order and without the sanction or connivance of the candidate;

## ELECTIONS

- (b) the candidate took all reasonable means for preventing the commission of election offences at the election;
- (c) the election offence was of a trivial, unimportant and limited character; and
- (d) in all other respects, so far as disclosed by the evidence, the election was free from any election offence on the part of the candidate and of his official agent;

the election of the candidate is not by reason of the election offence, void.

### **Candidate acting in ignorance but in good faith.**

**171 (3)** Where a court hearing a petition under The Controverted Elections Act finds that an act constituting an election offence was committed by a candidate or with his actual knowledge and consent but without any corrupt intent and in excusable ignorance that the act constituted an election offence, and that the candidate honestly desired, and in good faith endeavoured as far as he could, to have the election conducted according to law, the election of the candidate is not, by reason of the election offence, void.

S.M. 1980, c. 67, s. 171.

### **Second election not voided by election offences at first.**

**172** Where an election is set aside and a 2nd election had, the 2nd election shall be deemed to be a new election and is not voided by reason of election offences committed at the 1st election.

S.M. 1980, c. 67, s. 172.

### **Corrupt vote not to be counted.**

**173** At the trial of an election petition, one vote for each person proved to have voted, after having been guilty of an election offence at the instigation of a candidate, his official agent, or any of the scrutineers, or any other person acting in the name or in the interest of the candidate, shall be struck off from the number of votes given in favour of the candidate.

S.M. 1980, c. 67, s. 173.

### **Election not invalid for irregularities.**

**174** No election is invalid by reason of

- (a) any irregularity on the part of the returning officer or in any of the proceedings preliminary to the polls; or
- (b) a failure to hold a poll at any place appointed for holding a poll; or
- (c) non-compliance with the provision of this Act as to the taking of the poll or the counting of the votes or as to limitations of time; or
- (d) any mistake in the use of any prescribed form;

if it is shown, to the satisfaction of the court having cognizance of the question, that the election was conducted in accordance with the principles laid down in this Act and that the irregularity, failure, non-compliance or mistake, did not materially affect the result of the election.

S.M. 1980, c. 67, s. 174.

## STATUTES AND REGULATIONS

### Introduction

Finally this chapter on the legislative power of Manitoba will examine statutory sources dealing with the elaboration, publication and interpretation of statutes and regulations.

### Statutes

A statute of Manitoba has to be passed by the Legislative Assembly and assented to by the Lieutenant Governor to become law. The Legislative Assembly has to examine every bill following an orderly procedure comprising three readings. At the time of the second reading bills are often considered by committees of the Assembly. It should be mentioned that in order to encourage the drafting of uniform laws, Manitoba has passed an act which provides for the appointment of Commissioners for the promotion of uniformity of legislation in Canada. It is entitled: An Act to provide for the Appointment of Commissioners for the Promotion of Uniformity of Legislation in Canada, R.S.M. 1970, c. U30, as amended.

Once assented to by the Lieutenant Governor, the statutes of Manitoba have to be published in English and French, according to section 23 of the Manitoba Act, 1870. In spite of this provision, the statutes of Manitoba have been published in English only since 1890, when the Legislative Assembly of Manitoba passed the following statute: An Act to Provide that the English Language Shall Be the Official Language of the Province of Manitoba (S.M. 1890, c. 14; R.S.M. 1970, c. O10). The Supreme Court of Canada, however, in the decision of December 13, 1979, in Attorney General of Manitoba v. Forest, (1979), 2 S.C.R. 1032, decided that the Legislature of Manitoba did not have the power to change section 23 of the Manitoba Act. Following this decision of the highest court in the land, the Legislature of Manitoba passed An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes (S.M. 1980, c. 3, s. 7, assented to on July 9, 1980), which repeals its law of 1890. It follows that the sta-



tutes of Manitoba will henceforth be published in English and French, and those published in English only, will be translated into French. Furthermore, the publication of statutes have to follow provisions specified in the Public Printing Act (R.S.M. 1970, c. P240, as amended). Pursuant to section 17 of this statute, the Clerk of the Legislative Assembly shall furnish the provincial Queen's Printer with a certified copy of every assented act of the Legislature. According to sections 14 and 15, all copies of the statutes printed by the Queen's Printer or any person authorized by the Lieutenant Governor, are authentic and make proof of their contents without any other evidence. As to revised statutes, the provisions concerning their coming into force and interpretation are specified in the Revised Statutes of Manitoba, 1970, Act, S.M. 1970, c. 4.

The statutes of Manitoba have to be construed following the rules contained in the two statutes reproduced below: An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes, and the Interpretation Act, as well as other rules of construction not inconsistent with the latter act (see section 3 (4)).

### Regulations

The Regulations Act of Manitoba defines all the steps followed in the elaboration of provincial regulations. Section 3 provides for the filing with the registrar of every regulation in duplicate. According to section 6, the registrar may decide whether any regulation presented to him for filing is a regulation within the meaning of this act, and report his decision to the Lieutenant Governor in Council. Unless expressly provided to the contrary in another act, a regulation that is not filed has no effect. Unless a later day is provided, a regulation comes into force on the day it is filed with the registrar (section 3). Unless expressly provided to the contrary in another act, a regulation is not valid against a person before the date of its publication in the Manitoba Gazette, or the date of the dispensation from its publication by the Lieutenant Governor (section 4). It should be mentioned that every regulation stands permanently referred to the Standing Committee on Statutory Regulations and Orders of the Legislative Assembly (section 10). In addition, a copy of each regulation shall be laid before the Legisla-

tive Assembly within the first fifteen days of each session of the Legislature (section 11). The Legislative Assembly can, by a resolution, disapprove a regulation, or require it to be amended, and the authority making the regulation has to revoke or amend the regulation as required in the resolution of the Legislative Assembly.

Unless the publication of a regulation is dispensed with, or the time for publication is extended by order of the minister, it has to be published within one month of the filing with the registrar. When the time for publication of a regulation is extended, or the publication is dispensed with, the registrar has to publish the order or a notice of it in the Manitoba Gazette. According to section 5 of the Regulations Act, and sections 35 and 36 of the Manitoba Evidence Act, the production of copy of a regulation published by the Queen's Printer, or available at the issuing department when its publication was dispensed with by order of the Lieutenant Governor in Council, is prima facie proof of its existence and contents. In addition, section 31 of the Manitoba Evidence Act provides that judicial notice shall be taken of all provincial acts and regulations made under the authority of any such act.

The situation is, however, different with respect to the elaboration and publication of consolidations and revisions of the regulations. According to section 14 of the Regulations Act, the consolidated and revised regulations shall not come into effect unless approved in a report of the Standing Committee of the Assembly on Statutory Regulations and Orders, and the Assembly concurs in the report. Such consolidated and revised regulations comes into force on a date fixed by the Lieutenant Governor in Council, and on that date they are deemed to have been published in the Manitoba Gazette, even so their publication in the Gazette is not required. They shall not, however, come into force until they have been printed and are available for sale to the public through the office of the Queen's Printer.

Finally it should be pointed out that regulations have to be construed following the rules set forth in the Interpretation Act mentioned above, and in compliance with its section 3(4), any other rules of construction not inconsistent with this act.



Legislative sources dealing with the elaboration, publication and interpretation of statutes and regulations of Manitoba are as follows:

1. British North America Act.  
Note: The provisions of its sections 53 to 57 dealing with the elaboration of statutes apply mutatis mutandis to Manitoba as specified in section 90 of the B.N.A. Act, and section 2 of the Manitoba Act, 1870. The B.N.A. Act does not, however, contain any provision concerning the interpretation of statutes or regulations.
2. Manitoba Act, 1870.  
Note: Section 23 of this statute, reproduced in volume 1 of this collection, pp. B67, and subs., provides that "the acts of the Legislature shall be printed and published" in both the English and French languages.
3. Act Respecting the Operation of Section 23 of the Manitoba Act in Regard of Statutes, S.M. 1980, c. 3; C.C.S.M. S207.  
Note: This statute, reproduced below, establishes the rules of interpretation to be followed in cases of conflict between the English and the French texts of an act. It repeals the statute of 1890 (S.M. 1890, c. 14; R.S.M. 1970, c. O10), which provided that the English language be the only official language of Manitoba, contrary to the provisions of section 23 of the Manitoba Act.
4. Interpretation Act, R.S.M. 1970, c. I80, as amended.  
Note: This statute, reproduced in full below, applies to the interpretation of regulations as well as statutes.
5. Regulations Act, R.S.M. 1970, c. R60, as amended.  
Note: This statute, not reproduced here, entrusts the Registrar of Regulations with the filing, custody and publication of regulations, and specifies conditions regarding their validity and coming into force. It is implemented by various regulations listed in the latest issues of the Regulations in Force, and in the Index to Manitoba Regulations of the Manitoba Gazette.
6. Revised Statutes of Manitoba, 1970, Act, S.M. 1970, c. 4.  
Note: This statute, not reproduced here, deals with the



elaboration, coming into force, publication and interpretation of the revised statutes of 1970.

7. Public Printing Act, R.S.M. 1970, c. P240, as amended.

Note: This statute, not reproduced here, entrusts specifically the Queen's Printer of the province with the publication and distribution of statutes and regulations and sanctions their authenticity. It is supplemented by regulations listed in the Regulations in Force and in the Index to Manitoba Regulations of the Manitoba Gazette.

8. Manitoba Evidence Act, R.S.M. 1970, c. E150, as amended.

Note: Sections 31, 32, 35 and 36 of this statute deal with the judicial notice and documentary evidence of imperial, federal, provincial and foreign statutes, ordinances and regulations.

## LOIS ET RÈGLEMENTS

### Introduction

Ce chapitre sur le pouvoir législatif au Manitoba se termine par un examen de l'élaboration, de la publication et de l'interprétation des lois et règlements.

### Les lois

Aucune loi manitobaine ne peut avoir d'existence juridique sans avoir été adoptée au préalable par l'Assemblée législative et sanctionnée par le lieutenant-gouverneur. L'Assemblée législative doit examiner tout projet de loi en suivant une procédure régulière qui comprend trois lectures. Lors de la seconde lecture, les projets de loi sont souvent soumis à la considération de comités parlementaires. Il convient de souligner que, dans le but de favoriser la rédaction de lois uniformes, le Manitoba a adopté une loi prévoyant la nomination de commissaires au sein de la Conférence sur l'uniformisation des lois au Canada; cette loi s'intitule An Act to Provide for the Appointment of Commissioners for the Promotion of Uniformity of Legislation in Canada, R.S.M. 1970, c. U30 et ses modifications.

Une fois sanctionnées, les lois de la province doivent être publiées en français et en anglais suivant l'art. 23 de l'Acte du Manitoba, 1870. Nonobstant cette disposition, les lois manitobaines n'ont été publiées qu'en anglais depuis 1890 en raison de l'adoption par la législature du Manitoba de la loi intitulée An Act to Provide that the English Language Shall Be the Official Language of the Province of Manitoba (S.M. 1890, c. 14; R.S.M. 1970, c. 010). Toutefois, le 13 décembre 1979, dans l'arrêt Le Procureur général du Manitoba c. Forest (1979)2 R.C.S. 1033, la Cour suprême du Canada décidait que la législature du Manitoba n'avait pas le pouvoir de modifier l'art. 23 de l'Acte du Manitoba. Par suite de cet arrêt du plus haut tribunal du pays et par une loi sanctionnée le 9 juillet 1980 et intitulée An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes (S.M. 1980, c. 3, s. 7), le législateur manitobain a abrogé sa loi de 1890. Il s'ensuit que les lois du Manitoba seront dorénavant publiées en anglais et en français; quant aux lois qui n'ont été publiées qu'en anglais, elles seront traduites en français. Par ailleurs, la publication des lois doit être conforme aux dispositions du Public

Printing Act résumé ci-après. D'après l'art. 17 de cette dernière loi, le greffier de l'Assemblée législative doit fournir à l'éditeur officiel de la province un exemplaire visé de toute loi sanctionnée. En vertu des art. 14 et 15, tout exemplaire de loi imprimé par l'éditeur officiel ou par toute autre personne autorisée par le lieutenant-gouverneur en conseil, est authentique et fait preuve de son contenu. Le cas des lois refondues est couvert par le Revised Statutes of Manitoba, 1970, Act (S.M. 1970, c. 4), notamment en ce qui regarde leur entrée en vigueur et leur interprétation.

L'interprétation des lois manitobaines doit se faire suivant les règles contenues dans les lois reproduites ci-après et intitulées An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes et Interpretation Act et, par application de l'art. 3(4) de cette dernière loi, suivant toute autre règle d'interprétation qui n'est pas incompatible avec ses dispositions.

### Les règlements

Le Regulations Act du Manitoba détermine toutes les étapes relatives à l'élaboration des règlements de cette province. L'art. 3 prévoit le dépôt de deux exemplaires de tout règlement auprès du registraire des règlements. En vertu de l'art. 6, il appartient au registraire de décider si un texte réglementaire dont il a reçu dépôt est un règlement au sens de cette loi; il doit faire rapport de ses décisions au lieutenant-gouverneur en conseil. Sans le dépôt prévu, un règlement ne peut avoir d'effet à moins qu'il n'y ait dispense expresse de dépôt stipulée dans la loi. Et, à moins qu'une date ultérieure n'ait été fixée, il entre en vigueur le jour de son dépôt chez le registraire (art. 3). Sauf le cas où une loi renferme une disposition au contraire, aucun règlement ne peut être valide à l'encontre d'une personne avant la date de sa publication dans le Manitoba Gazette ou avant la date de publication de l'avis de dispense de publication accordée par le lieutenant-gouverneur en conseil (art. 4). Il importe de retenir que tout règlement est soumis au contrôle constant du comité permanent de l'Assemblée législative sur les règlements (art. 10). Tout nouveau règlement doit, de plus, être déposé à l'Assemblée législative dans les quinze jours qui suivent le début de chaque session (art. 11). L'Assemblée législative peut même, par voie de résolution, désavouer un règlement ou en demander la modification. L'autorité réglementaire intéressée est alors tenue d'annuler ou de modifier



le règlement en question suivant les termes de la résolution de l'Assemblée législative.

A moins qu'il ne fasse l'objet d'une dispense de publication, tout règlement doit être publié au cours du mois qui suit son dépôt chez le registraire ou après l'expiration de ce délai pourvu que le ministre responsable émette une ordonnance à cet effet. De même, lorsque le délai de publication est prolongé ou qu'il y a dispense de publication, le registraire doit faire publier un avis à ce sujet dans le Manitoba Gazette. Selon l'art. 5 du Regulations Act et les art. 35 et 36 du Manitoba Evidence Act, tout texte réglementaire ainsi publié ou disponible autrement, chez l'éditeur officiel ou au bureau du ministère concerné en conformité de l'avis de dispense de publication accordée par le lieutenant-gouverneur en conseil, fait preuve prima facie de son existence et de son contenu. En vertu de l'art. 31 du Manitoba Evidence Act, connaissance judiciaire doit être prise de toute les lois provinciales et des règlements établis sous leur autorité.

Par ailleurs, la situation est différente en ce qui concerne l'élaboration et la publication des codifications et refontes de règlements. Suivant l'art. 14 du Regulations Act, aucune codification ou refonte des règlements ne peut avoir d'effet sans l'approbation du comité permanent de l'Assemblée législative sur les règlements, constatée dans un rapport que l'Assemblée législative doit elle-même entériner. Une telle refonte ou codification entre en vigueur à la date fixée par le lieutenant-gouverneur en conseil et est réputée avoir été publiée dans la Gazette à compter de sa date d'entrée en vigueur. La date d'entrée en vigueur d'une codification ou d'une revision ne peut être antérieure à la date de son impression et de sa mise en disponibilité au public par le truchement de l'éditeur officiel.

Enfin, il y a lieu de souligner que les règlements doivent être interprétés suivant les règles contenues dans l'Interpretation Act déjà mentionné et, par application de l'art. 3(4) de cette loi, suivant toute autre règle qui n'est pas incompatible avec ses dispositions.

Les sources législatives portant sur l'élaboration, la publication et l'interprétation des lois et règlements du Manitoba sont les suivantes:

1. A.A.N.B.

Note: Vu l'art. 2 de l'Acte du Manitoba, 1870, les dispositions de l'A.A.N.B. relatives à l'élaboration des lois (art. 53-57 par application de l'art. 90), s'appliquent mutatis mutandis au Manitoba. L'A.A.N.B. ne contient cependant aucune disposition sur l'interprétation des lois ou sur le pouvoir réglementaire.

2. Acte du Manitoba, 1870

Note: L'art. 23 de cet acte, reproduit intégralement aux pages B67 et suivantes du volume 1 de cette collection, prévoit que les "actes de la législature seront imprimés et publiés" en français et en anglais.

3. Act Respecting the Operation of Section 23 of the Manitoba Act in Regard of Statutes, S.M. 1980, c. 3; C.C.S.M. S207

Note: En plus d'abroger la loi de 1890 (S.M. 1890, c. 14; R.S.M. 1970, c. 010) qui faisait de l'anglais la seule langue officielle du Manitoba contrairement aux dispositions de l'art. 23 de l'Acte du Manitoba, cette loi, reproduite ci-après, établit notamment les règles d'interprétation à suivre en cas d'incompatibilité entre le texte anglais et le texte français d'une loi.

4. Interpretation Act, R.S.M. 1970, c. I80 et ses modifications

Note: Cette loi, reproduite intégralement ci-après, concerne tant l'interprétation des règlements que celle des lois.

5. Regulations Act, R.S.M. 1970, c. R60 et ses modifications

Note: Cette loi, non reproduite ici, confie au registraire des règlements l'examen, la garde et la publication des textes réglementaires et détermine les conditions relatives à leur validité et à leur entrée en vigueur. Elle est complétée par divers règlements signalés dans les plus récents numéros du Regulations in Force et de l'Index to Manitoba Regulations du Manitoba Gazette.

6. Revised Statutes of Manitoba, 1970, Act, S.M. 1970, c. 4

Note: Cette loi, non reproduite ici, traite de l'élaboration, de la mise en vigueur, de la publication et de l'interprétation des lois refondues de 1970.

7. Public Printing Act, R.S.M. 1970, c. P240 et ses modifications

Note: Cette loi, non reproduite ici, confie notamment à l'éditeur officiel de la province l'impression et la diffusion des lois et règlements et consacre l'authenticité des publications qui les renferment. Elle se complète par des règlements signalés dans le Regulations in Force et dans l'Index to Manitoba Regulations du Manitoba Gazette.

8. Manitoba Evidence Act, R.S.M. 1970, c. E150 et ses modifications

Note: Les art. 31, 32, 35 et 36 de cette loi ont trait respectivement à la connaissance judiciaire et à la preuve documentaire des lois, ordonnances, règlements impériaux, fédéraux, provinciaux et étrangers.



## INTERPRETATION ACT

R.S.M. 1970, c. I80

Amended by 1971, c. 82, s. 30; 1972, c. 81, s. 14;  
1974, c. 59, s. 36; 1975, c. 42, s. 28; 1976, c.  
69, s. 28; 1977, c. 57, s. 20; 1978, c. 49, s. 57

### Note:

See also the Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes, reproduced hereafter, which provides for the rules of construction applicable where the meaning of a provision of an act in one official language conflicts with, is repugnant to or is inconsistent with the meaning of the corresponding provision of the act in the other official language.

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## INTERPRETATION ACT

R.S.M. 1970, c. I80

Modifié par 1971, c. 82, art. 30; 1972, c. 81, art.  
14; 1974, c. 59, art. 36; 1975, c. 42, art. 28;  
1976, c. 69, art. 28; 1977, c. 57, art. 20; 1978,  
c. 49, art. 57

### Note:

Consulter aussi la loi intitulée Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes, (reproduite immédiatement à la suite de la présente loi) qui prévoit les règles d'interprétation à suivre en cas d'incompatibilité entre le texte français et le texte anglais d'une loi manitobaine.

## **AN ACT RESPECTING THE FORM AND INTERPRETATION OF THE STATUTES.**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### **Short title.**

- 1 This Act may be cited as: "The Interpretation Act".  
S.M., 1957, c. 48, s. 1.

## **INTERPRETATION**

### **Definitions.**

- 2(1) In this Act,
- (a) "enactment" means an Act or a regulation or any portion of an Act or a regulation, and as applied to a territory of Canada, includes an Ordinance of the territory;
  - (b) "public officer" includes any person in the public service of the government,
    - (i) who is authorized to do, or enforce the doing, of any act or thing or to exercise any power, or
    - (ii) upon whom any duty is imposed, by or under any public Act;
  - (c) "regulation" includes any rule, rule of court, order prescribing regulations, tariff of costs or fees, form, by-law, resolution, or order made in the execution of a power given by an enactment; and
  - (d) "repeal" includes revoke or cancel.

### **Expired Act deemed repealed.**

- 2(2) For the purposes of this Act, an enactment that has expired or lapsed or otherwise ceased to have effect shall be deemed to be repealed.

S.M., 1957, c. 33, s. 2.

## **APPLICATION**

### **Application.**

- 3(1) Every provision of this Act extends and applies to every enactment, unless a contrary intention appears, enacted or made before or after the commencement of this Act.

### **Interpretation sections subject to exceptions.**

- 3(2) Where an enactment contains an interpretation section or provision, it shall be read and construed as being applicable only if the contrary intention does not appear.

### **Application to this Act.**

- 3(3) The provisions of this Act apply to the interpretation of this Act.

### **Saving.**

- 3(4) Nothing in this Act shall be construed to exclude the application to any enactment of a rule of construction applicable thereto and not inconsistent with this Act.

S.M., 1957, c. 33, s. 3.

## INTERPRETATION

### FORM OF ENACTING

#### Form of enacting clause.

**4(1)** The enacting clause of a statute may be in the following form: "Her Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:".

#### Form of preamble.

**4(2)** The enacting clause shall follow the setting forth, if any, of the considerations or reasons upon which the law is grounded, and shall, with the considerations or reasons, constitute the preamble, and the various provisions of the statute shall follow in a concise and enunciative form.

#### Parts of Act.

**4(3)** The preamble of an Act and schedules, forms, and tariffs, referred to in an Act, or made under the authority thereof, are each part thereof.

S.M., 1957, c. 33, s. 4.

## COMMENCEMENT OF ACTS

#### Endorsement of assent or reservation of Act.

**5(1)** The Clerk of the Legislative Assembly shall enter on every Act of the Legislature, immediately after its title, the day, month, and year when it was assented to or reserved by the Lieutenant Governor.

#### Endorsement when Act reserved.

When an Act is reserved, the clerk shall also enter thereon the day, month, and year, when the Lieutenant Governor signifies either by speech or message to the Legislative Assembly, or by proclamation, that it was laid before the Governor General in Council and that the Governor General in Council was pleased to assent thereto; and the entry shall be part of the Act.

#### Coming into force of Acts when no time specified.

**5(3)** If no other date of commencement is provided in an Act, the sixtieth day after the day of assent, or when the Act is reserved the tenth day after the publication in The Manitoba Gazette of notice of the signification, shall be the day of its commencement.

S.M., 1957, c. 33, s. 5.

## OPERATION

#### Date of operation.

**6(1)** Where an enactment is expressed to come into force or operation on a particular day, or on a day fixed by proclamation or otherwise, it shall be construed as coming into force or operation immediately on the expiration of the previous day; and where an enactment is expressed to expire, lapse or otherwise cease to have effect on a particular day, it shall be construed as ceasing to have effect immediately on the commencement of the following day.



## INTERPRETATION

### **Preliminary proceedings.**

**6(2)** Where an enactment is not to come into force or operation immediately on its being passed or made and it confers power,

- (a) to make appointments;
- (b) to hold elections;
- (c) to make regulations;
- (d) to make, grant or issue instruments;
- (e) to give notices;
- (f) to prescribe forms; or
- (g) to do any other thing;

that power may, for the purpose of making the enactment effective upon its commencement, be exercised at any time after the passing or making thereof, but a regulation made thereunder before the commencement of the enactment has no effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective upon its commencement.

### **Proclamation of portions of Acts, etc.**

**6(3)** Where an enactment is to come into force on a day fixed by proclamation, the proclamation may apply to, and fix a day for the coming into force of, any part, section, or portion, of the enactment; and proclamations may be issued at different times as to any part, section, or portion, of the enactment.

Am. S.M., 1958, (1st. Sess.), c. 67, s. 9.

### **Effective date of coming into force section.**

**6(4)** Where, under a provision of an Act, the Act or any part thereof is to come into force on a day fixed by proclamation, that provision unless it is otherwise expressly provided, shall be conclusively deemed to come into force on the day on which the royal assent is given to the Act.

En. S.M., 1960, c. 28, s. 1. S.M., 1957, c. 33, s. 6; am.

## CONSTRUCTION

### **Persona designata rule.**

**7(1)** Whenever by an enactment judicial or quasi-judicial powers are given to a judge or officer of a court, the judge or officer shall be deemed to exercise such power in his official capacity and as representing the court to which he is attached; and he may for the purpose of performing the duties imposed upon him by the enactment, subject to the provisions thereof, exercise the powers he possesses as a judge or officer of the court.

### **Appeal from judge.**

**7(2)** Without restricting the generality of subsection (1), where under any Act an appeal is given from any person, board, commission, or other body to a court or judge, unless otherwise specifically provided in that Act, an appeal lies from the decision of the court or judge as in the case of any other action, matter, or proceeding, in that court or in the court of which the judge is a member.

### **Proceedings by one judge continued by another.**

**7(3)** Where any enactment of Manitoba or any law in force in Manitoba provides that any proceeding, matter, or thing, shall be done by or before a judge, the term "judge" in all such cases means a judge of the court mentioned or referred to in the

## INTERPRETATION

enactment; and any proceeding, matter, or thing, when properly commenced before a judge, may be continued or completed before any other judge of the same court.

S.M., 1957, c. 33, s. 7.

### **Law always speaking.**

**8(1)** The law shall be considered as always speaking, and whenever a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise so that effect may be given to each enactment and every part thereof according to its true spirit, intent, and meaning.

**“Now”, “next”, “heretofore”, “hereafter”.**

**8(2)** The expression “now”, “next”, “heretofore” or “hereafter” shall be interpreted as having reference to the time when the enactment or the part or provision thereof containing the expression came into force.

**“Shall”, “may” .**

**8(3)** The expression “shall” shall be read as imperative and the expression “may” as permissive and empowering.

**“Herein”.**

**8(4)** The expression “herein” used in a section or provision of an enactment relates to the whole enactment and not to that section or provision only.

### **Interpretation provisions.**

**8(5)** Definitions or rules of interpretation contained in an enactment, unless the contrary intention appears, apply to the construction of the provisions of the enactment that contain those definitions or rules of interpretation, as well as to the other provisions of the enactment.

S.M., 1957, c. 33, s. 8.

### **Provisions in private Acts.**

**9** No provision in a private Act affects the rights of a person except only as therein mentioned or referred to.

S.M., 1957, c. 33, s. 9.

### **Pending litigation.**

**10** The provisions of an enactment do not affect litigation pending at the time of its enactment unless it is so expressly stated therein.

S.M., 1957, c. 33, s. 10.

### **Preamble part of enactment.**

**11** The preamble of an enactment shall be read as a part thereof intended to assist in explaining its purport and object.

S.M., 1957, c. 33, s. 11.

### **Supplementary matters forming no part of Act.**

**12** The marginal notes, and the notes and headings in the body of an enactment, and the references to former enactments, and the tables of contents printed following the long title, form no part of the enactment but shall be deemed to be inserted for convenience of reference only.

S.M., 1957, c. 33, s. 12.

## INTERPRETATION

### **Enactments deemed remedial.**

**13** Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best insures the attainment of its objects.

S.M., 1957, c. 33, s. 13.

### **Words in regulations to have same meaning as in enactment.**

**14(1)** Where an enactment confers power to make regulations or to grant, make or issue an order, writ, warrant, scheme, or letters patent, expressions used therein shall, unless the contrary intention appears, have the same respective meanings as in the enactment conferring the power.

### **Right to prerogative writs not affected.**

**14(2)** Where an Act confers power to make regulations and

- (a) provides that regulations made thereunder shall be, or shall be deemed to be, part of the Act, or shall be construed, or shall have effect, or shall have the force of law, as if enacted as part of the Act; or
  - (b) contains a provision of like import or effect to those mentioned in clause (a);
- the provision shall not, unless otherwise specifically stated in the Act, limit the right of any person to apply for and obtain an order of certiorari, mandamus, injunction, or prohibition.

S.M., 1957, c. 33, s. 14.

### **Her Majesty not bound unless named.**

**15** No enactment is binding on Her Majesty or affects Her Majesty or Her Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

S.M., 1957, c. 33, s. 15.

### **Powers vested in corporations.**

**16** Words in an enactment establishing a corporation,

- (a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purposes for which the corporation is constituted and to alienate the same at pleasure;
- (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
- (c) exempt from personal liability for its debt, obligations, or acts such individual members of the corporation as do not contravene the provisions of the enactment incorporating them.

S.M., 1957, c. 33, s. 16.

### **Proclamations.**

**17** Where the Lieutenant Governor is authorized to do an act by proclamation, it is to be understood that the proclamation is a proclamation issued under an order of the Lieutenant Governor in Council, but it is not necessary to mention in the proclamation that it is issued under the order.

S.M., 1957, c. 33, s. 17.

### **Public officers hold office during pleasure.**

**18** Every public officer appointed before or after the commencement of this Act by or under the authority of an enactment or otherwise, holds office during pleasure



## INTERPRETATION

only, unless it is otherwise expressed in the enactment or in his commission or appointment.

S.M., 1957, c. 33, s. 18.

### **Implied power re public officers.**

**19(1)** Words authorizing the appointment of a public officer include the power of,

- (a) removing or suspending him;
- (b) reappointing or reinstating him;
- (b1) appointing his deputy;
- (c) appointing another in his stead or to act in his stead; and
- (d) fixing, and authorizing the payment of, his remuneration and varying or terminating it;

in the discretion of the authority in whom power of appointment is vested.

Am. S.M., 1966, (1st Sess.), c. 31, s. 1.

### **Implied power of successors.**

**19(2)** Words directing or empowering a public officer to do any act or thing, or otherwise applying to him by his name of office, include his successors in the office and his or their deputy.

### **Implied power to deputy or successor to minister.**

**19(3)** Words directing or empowering a minister of the Crown to do an act or thing, or otherwise applying to him by his name of office, include

- (a) a minister acting for him;
- (b) if the office is vacant, a minister designated to act in the office by or under the authority of an order in council;
- (c) his successors in office; and
- (d) his or their deputy.

R. & S., S.M., 1959, (2nd Sess.), c. 30, s. 1.

### **Power of public officer may be exercised by holder of office.**

**19(4)** Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office.

### **Exercise of powers delegated by minister of the Crown.**

**19(5)** Where, under any Act of the Legislature, a minister of the Crown is authorized to delegate to any other person, any power or authority granted to, or vested in, him by an Act of the Legislature, words in any Act of the Legislature granting to, or vesting in, that minister any power or authority or referring to him by name of his office, extend to and include any person to whom the minister may have, as so authorized, delegated such power or authority if the power or authority so granted or vested is included in the power or authority so delegated.

En. S.M., 1958, (1st Sess.), c. 26, s. 1.

### **Meaning of "deputy".**

**19(6)** In this section "deputy" means a person appointed by, or under a power conferred by, a statute as a deputy minister of the Crown or as the deputy of any other public officer.

En. S.M., 1959, (2nd Sess.), c. 30, s. 1. S.M., 1957, c. 33, s. 19; am.

## INTERPRETATION

### Implied powers.

#### 20(1) In an enactment,

- (a) where anything is directed to be done by or before a public officer, it shall be done by or before one whose jurisdiction or power extends to the place where such thing is to be done;
- (b) where power is given to the Lieutenant Governor in Council or a public officer to do, or enforce the doing of, any act or thing, all such powers shall be deemed also to be given as are necessary to enable him to do or enforce the doing of the act or thing;
- (c) where the doing of an act that is expressly authorized is dependent upon the doing of any other act by the Lieutenant Governor in Council or by a public officer, the Lieutenant Governor in Council or public officer, as the case may be, has the power to do that other act;
- (d) where any act or thing is required to be done by more than two persons, a majority may do it;
- (e) where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires;
- (f) where power is conferred to make regulations, the power shall be construed as including power, exercisable in like manner and subject to like consent and conditions, if any, to rescind, revoke, amend or vary the regulations and make others;
- (g) where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead, do not invalidate the form used;
- (h) words importing male persons include female persons and corporations;
- (i) words in the singular include the plural, and words in the plural include the singular;
- (j) where a word is defined, other parts of speech and tenses of that word have corresponding meanings;
- (k) where the time limited for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited extends to, and the thing may be done, on the first following day that is not a holiday; but if that day is also part of the time so limited that time shall be extended to, and the thing may be done on, the day next following the end of the time so limited that is not a holiday;
- (l) where a period of time dating from a given day, act, or event is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusively of such day or of the day of such act or event;
- (m) a reference to time is to be deemed a reference to official time required to be used and observed under The Official Time Act;
- (n) a reference to any city, town, village, rural municipality, local government district, school district, school area, or school division, or to The Metropolitan Corporation of Greater Winnipeg, shall be deemed a reference to that city, town, village, rural municipality, local government district, school district, school area, school division, or The Metropolitan Corporation of Greater Winnipeg, as the case may be, as it is constituted, and as its boundaries are established, from time to time.

Am. S.M., 1966, (1st Sess.), c. 31, s. 2.

### Extension of time for filing, etc.

**20(2)** Where, under any Act of the Legislature, the time limited for the registration or filing of any instrument, or for the doing of any thing, expires or falls on a day on which, pursuant to any statute or law in force in the province, the office or place in which the instrument or thing is required or authorized to be filed or done, is closed, the time so limited extends to, and the instrument or thing may be filed or done, on the first following day on which the office is open.

En. S.M., 1961, (1st Sess.), c. 53, s. 17. S.M., 1957, c. 33, s. 20; am. S.M., 1966, (1st Sess.), c. 31, s. 3; am.



## INTERPRETATION

### REFERENCES

#### **Citation of statutes.**

**21(1)** In an enactment or document, an Act of the Legislature or of any other province or territory of Canada or of Canada may be cited by reference to its title or its short title, if any, either with or without reference to the chapter, or by reference to the number of the chapter of the Revised Statutes or Revised Ordinances or of the Statutes or Ordinances for the year of Our Lord or the regnal year in which the Act was passed.

#### **Citation includes amendments.**

**21(2)** A citation of or reference to an Act of the Legislature or of any other province or territory of Canada or of Canada shall be deemed to be a citation of or reference to the Act as amended.

S.M., 1957, c. 33, s. 21.

#### **Reference to sections by numbers to be inclusive.**

**22(1)** A reference in an enactment by number or letter to two or more Parts, divisions, sections, subsections, paragraphs, sub-paragraphs, clauses, sub-clauses, schedules, or forms in an enactment shall be read as including the number or letter first mentioned and the number or letter last mentioned.

#### **References in an enactment to parts thereof.**

**22(2)** A reference in an enactment to a Part, division, section, schedule or form shall, unless the contrary intention appears, be read as a reference to a Part, division, section, schedule, or form of the enactment in which the reference occurs.

#### **References in sections.**

**22(3)** A reference in an enactment to a subsection, paragraph, sub-paragraph, clause, or sub-clause shall, unless the contrary intention appears, be read as a reference to a subsection, paragraph, sub-paragraph, clause, or sub-clause of the section, subsection, paragraph, sub-paragraph, or clause, as the case may be, in which the reference occurs.

#### **References to regulations.**

**22(4)** A reference in an enactment to regulations shall, unless the contrary intention appears, be read as a reference to regulations made under the enactment in which the reference occurs.

#### **References to enactments.**

**22(5)** A reference in an enactment by number or letter to any section, subsection, paragraph, sub-paragraph, clause, sub-clause, or other division or line of another enactment shall be read as a reference to the section, subsection, paragraph, sub-paragraph, clause, sub-clause, or other division or line of such other enactment as printed by authority of law.

S.M., 1957, c. 33, s. 22.

## WORDS AND PHRASES

#### **Definitions.**

**23(1)** In an enactment, the words and expressions defined in subsection (1) of section 2 have the meanings given them therein, and the expression



## INTERPRETATION

- (1) "assembly" means the Legislative Assembly of the province;
- (2) "bank" or "chartered bank" means a bank to which the Bank Act (Canada) applies, and includes a branch, agency, and office of a bank;
- (3) "book" includes a loose-leaf book or binder;
- (4) "British subject" or "subject of Her Majesty" includes any person who, under the law of any country in the Commonwealth, is a citizen of that country;
- (5) "city", "town", "village" and "rural municipality" means respectively, an incorporated city, town, village, or rural municipality as the case may be, as defined by The Municipal Act or any subsequent Act from time to time in force relating to the municipal institutions of the province, and the expression "city" includes a city having a special charter;
- (6) "Commonwealth" or "British Commonwealth" means the association of countries named in the Schedule, and includes the dependencies, colonies, protectorates, protected states, condominiums and trust territories of any one or more of them; and "country in the Commonwealth" includes the dependencies, colonies, protectorates, protected states, condominiums, and trust territories aforesaid;
- (7) "Comptroller-General" or "Provincial Auditor" means the Provincial Auditor appointed under The Provincial Auditor's Act and includes the officers or clerks acting under his direction;
- (8) "Consolidated Fund" means the Consolidated Fund as prescribed in The Financial Administration Act;
- (9) "County Court district" means a County Court district under The County Courts Act;  
 Note: Re. Consolidated Fund - See sec. 4 of The Financial Administration Act.
- (10) "Court of Queen's Bench" or "Queen's Bench" means Her Majesty's Court of Queen's Bench for Manitoba;
- (11) "duly qualified medical practitioner" or "legally qualified medical practitioner" or any other words or expression importing legal recognition of any person as a medical practitioner or member of the medical profession means a person registered under The Medical Act;
- (12) "electoral division" means any territorial division or district entitled to return a member of the Legislative Assembly of Manitoba;
- (13) "Executive Council" means the Executive Council of the Province of Manitoba;
- (14) "gazette" means The Manitoba Gazette published by the Queen's Printer of Manitoba;
- (15) "government" or "Government of Manitoba" means Her Majesty the Queen, acting for the Province of Manitoba;
- (16) "Government of Canada" means Her Majesty the Queen acting for Canada;
- (17) "Governor", "Governor of Canada" or "Governor-General" means the Governor-General of Canada, or the chief executive officer or administrator carrying on the government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated;
- (18) "Governor in Council" or "Governor-General in Council" means the Governor-General of Canada, or person administering the Government of Canada, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with, the Queen's Privy Council for Canada;
- (19) "great seal" means the Great Seal of the Province of Manitoba;
- (20) "Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other realms and territories, and Head of the Commonwealth;
- (21) "Her Majesty's dominions", means the Commonwealth;
- (22) "holiday", subject to subsection (2), includes Sunday, New Year's Day, Good Friday, Victoria Day, Dominion Day, Labour Day, Remembrance Day, Christmas Day, the twenty-sixth day of December, (which shall be a non-judicial day) the birthday of the reigning sovereign or the day appointed for the celebration of the birth of the reigning sovereign, and any day appointed by any law in force in the province or by proclamation of the Governor-General or of the Lieutenant

## INTERPRETATION

Governor as a general holiday;

Note: For discussion of "juridical day" - See *Rex vs. Sawchuk*, (1923) 2 W.W.R., 824.

- (22.1) "international system of units (si)" means the basic, supplementary and derived units of measurement set out and defined in Schedule 1 of The Weights and Measures Act (Canada);.
- (23) "judicial district" means a district for judicial purposes, with the boundaries given by The Municipal Boundaries Act;
- (24) "justice" means a justice of the peace and includes a magistrate and a provincial judge
- (25) "Legislature" means the Lieutenant Governor acting by and with the advice and consent of the Legislative Assembly of the province;
- (26) "Lieutenant Governor" means the Lieutenant Governor of the province or the chief executive officer or administrator carrying on the government of the province on behalf and in the name of the Sovereign by whatever title he is designated;
- (27) "Lieutenant Governor in Council" means the Lieutenant Governor of the province or person administering the government of the province, acting by and with the advice of the Executive Council of the province;
- (28) "local government district" means a local government district incorporated and established under The Local Government Districts Act;
- (29) "magistrate" or "police magistrate" means a magistrate appointed under The Provincial Judges Act and includes a provincial judge;.
- (29.1) "medical examiner" means a medical examiner or the chief medical examiner appointed under The Fatality Inquiries Act;
- (30) "month" means calendar month;
- (31) "municipal clerk" or "clerk" as applied to an officer of a municipal corporation, means a clerk or secretary of a municipal corporation, and includes a secretary-treasurer where the offices of clerk and treasurer are combined, and acting clerk or acting secretary-treasurer, or vice versa;
- (32) "Municipal Commissioner" means the Minister of Municipal Affairs;
- (33) "municipal council" means the council exercising the powers of a municipal corporation under The Municipal Act or any other Act relating to municipal institutions;
- (34) "municipality" means any locality, the inhabitants of which are incorporated and continued under the authority of The Municipal Act or some other Act of the Legislature and includes a rural municipality and an incorporated city, town, and village, and where the context requires, includes an area comprised in any municipality; but does not include a local government district;
- (35) "oath" or "affidavit" in the case of persons for the time being allowed or required by law to affirm or declare instead of swearing, includes affirmation and declaration and the word "swear" in the like case includes "affirm" and "declare"
- (36) "peace officer" includes
  - (i) a mayor, reeve, sheriff, deputy sheriff, sheriff's officer, and a justice of the peace;
  - (ii) a warden deputy warden, instructor, keeper, gaoler, and guard of a penitentiary, gaol, or detention home, and any other officer or person who is in the service of the government and is employed in a penitentiary, gaol, or detention home;
  - (iii) a police officer, police constable, constable, bailiff, bailiff's officer, and any other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process;



## INTERPRETATION

- (iv) a member of the Royal Canadian Mounted Police Force; and
  - (v) a person appointed under any Act for the enforcement of that Act;
  - (37) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;
  - (38) "proclamation" means a proclamation of the Lieutenant Governor under the great seal issued pursuant to an order of the Lieutenant Governor in Council;
  - (39) "province" means the Province of Manitoba;
  - (39.1) "provincial judge" means a provincial judge appointed under The Provincial Judges Act;
  - (40) "registered dentist" means a person holding a valid and unexpired certificate of registration under The Dental Association Act;
  - 40.1 "registered mail" includes certified mail and "certified mail" includes registered mail and "registered letter" and "certified letter" mean a letter that is sent by registered mail or by certified mail;
  - (41) "Registrar-General", "district registrar", "land titles office", and "land titles district" means respectively the Registrar-General, the district registrar, a land titles office, and a land titles district appointed, established, or continued, under The Real Property Act;
  - (42) "registry office" and "registration district" means respectively a registry office and a registration district established or continued under The Registry Act;
  - (43) "the Revised Statutes" or "the Revised Statutes of Manitoba" means the latest revised and consolidated statutes of the province, and the Continuing Consolidation of the Statutes of Manitoba" or "the Continuing Consolidation of Manitoba Statutes" means the Revised Statutes of Manitoba, 1970, as they are altered from time to time by the amendment of any of the provisions thereof, or the repeal of Acts included therein, or the addition of new Acts which the Legislature authorizes to be cited as chapters of the Continuing Consolidation of the Statutes of Manitoba.
  - (44) "security" means sufficient security;
  - (45) "statutory declaration" or "solemn declaration" means a solemn declaration made pursuant to The Manitoba Evidence Act;
  - (46) "surety" means a sufficient surety;
  - (47) "two justices" means two or more justices of the peace assembled or acting together;
  - (48) "United Kingdom" means Great Britain and Northern Ireland;
  - Note: For name of United Kingdom - See sec. 17 Geo. V., cap. 4, sec. 2 (Imp).
  - (49) "United States" means the United States of America;
  - (50) "unorganized territory" means any part of the province that is not in a municipality, and includes the area of a disorganized municipality;
  - (51) "will" includes codicil;
  - (52) "writing", "written", or any term of like import includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in a visible form; and
  - (53) "year" means calendar year.
- Am. S.M., 1959, (2nd Sess.), c. 30, s. 2. S.M., 1961, (1st Sess.), c. 53, s. 17. S.M., 1963, c. 38, s. 1. S.M., 1965, c. 76, s. 11; S.M. 1971, c.82, s.30;  
S.M. 1972, c.81, s.14; S.M. 1974, c.59, s.36; S.M. 1975, c.42, s.28; S.M. 1976, c.69, s.28; S.M. 1977, c.57, s.20; S.M. 1978, c.49, s.57.

**Holidays falling on Sunday.**

**23(?)** Whenever a holiday, other than Remembrance Day or Sunday, falls on a Sunday the expression "holiday" includes the following day; and when Christmas Day falls upon a Sunday the twenty-seventh day of December is a holiday.



## INTERPRETATION

### **Boxing Day.**

**23(3)** Where the twenty-sixth or twenty-seventh day of December is a holiday, it may be known and described as: "Boxing Day"

### **Common names of countries, etc.**

**23(4)** In an enactment a name commonly applied to a country, place, body, corporation, society, officer, functionary, person, party, or thing means the country, place, body, corporation, society, officer, functionary, person, party, or thing to which the name is commonly applied although the name is not the formal or extended designation thereof.

S.M., 1957, c. 33, s. 23; am.

## REPEAL AND AMENDMENT

### **Power of repeal reserved.**

**24(1)** An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting, or modifying a power, privilege, or advantage thereby vested in, or granted to, a person.

### **Amendment at same session.**

**24(2)** An Act may be amended or repealed by an Act passed in the same session.

### **Amendment one with enactment.**

**24(3)** An amending enactment, so far as consistent with the tenor thereof, shall be construed as part of the enactment that it amends.

S.M., 1957, c. 33, s. 24.

### **Effect of repeal.**

**25(1)** Where an enactment is repealed in whole or in part, the repeal does not,

- (a) revive an enactment or thing not in force or existing at the time when the repeal takes place;
- (b) affect the previous operation of the enactment so repealed or anything duly done or suffered thereunder;
- (c) affect a right, privilege, obligation, or liability acquired, accrued, accruing, or incurred under the enactment so repealed;
- (d) affect an offence committed against, or a violation of, the provisions of the enactment so repealed, or any penalty, forfeiture, or punishment incurred in respect thereof; or
- (e) affect an investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment,

and an investigation, legal proceeding, or remedy, of the kind described in clause (e), may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the enactment had not been repealed

### **Repeal and substitution.**

**25(2)** Where an enactment is repealed in whole or in part and other provisions are substituted therefor,

- (a) every person acting under the enactment so repealed shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead;

## INTERPRETATION

- (b) every bond and security given by a person appointed under the enactment so repealed remains in force, and all offices, books, papers, and things made or used under the repealed enactment shall continue to be used as before the repeal as far as consistent with the substituted provisions;
- (c) every proceeding taken under the enactment so repealed shall be taken up and continued under, and in conformity with, the provisions so substituted, as far as consistently may be;
- (d) in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights, existing or accruing under the enactment so repealed or in a proceeding in relation to matters that have happened before the repeal, the procedure established by the substituted provisions shall be followed as far as it can be adapted thereto; and
- (e) when any penalty, forfeiture, or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture, or punishment, if imposed or adjudged after the repeal, shall be reduced or mitigated accordingly.

S.M., 1957, c. 33, s. 25.

### **References where enactment replaced.**

**26** Where an enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision, or consolidation,

- (a) all regulations made under the repealed enactment remain in force, in so far as they are not inconsistent with the substituted enactment, until they are annulled or others are made in their stead; and
- (b) a reference, in an unrepealed enactment to the repealed enactment, shall, as regards a subsequent transaction, matter, or thing, be read as a reference to the provisions of the substituted enactment relating to the same subject-matter as the repealed enactment; but where there are no provisions in the substituted enactment relating to the same subject-matter, the repealed enactment shall be read as unrepealed as far as is necessary to maintain or give effect to the unrepealed enactments.

S.M., 1957, c. 33, s. 26.

### **Repeal does not imply enactment was in force.**

**27(1)** The repeal of an enactment in whole or in part shall not be deemed to be, or to involve, a declaration that the enactment was, or was considered by the Legislature or other body or person by whom the enactment was passed or made to have been, previously in force.

### **Amendment does not imply change in law.**

**27(2)** The amendment of an enactment shall not be deemed to be, or to involve, a declaration that the law under the enactment was, or was considered by the Legislature or other body or person by whom the enactment was passed or made to have been, different from the law as it is under the enactment as amended.

### **Repeal does not declare previous law.**

**27(3)** The repeal of an enactment in whole or in part or the amendment of an enactment shall not be deemed to be, or to involve, a declaration as to the previous state of the law.



## INTERPRETATION

### **Judicial construction not adopted.**

**27(4)** A re-enactment, revision, consolidation, or amendment of an enactment shall not be deemed to be an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the enactment or upon similar language.

S.M., 1957, c. 33, s. 27.

## GENERAL

### **Pecuniary penalties may be recovered by civil action.**

**28** Where a pecuniary penalty or a forfeiture is imposed for contravention of an enactment, if no other mode is prescribed for the recovery thereof, the penalty or forfeiture may be recovered with costs by civil action or proceeding at the suit of the Crown only, or of any private party suing as well for the Crown as for himself, in any form of action allowed in such a case by the law of the province, before any court having jurisdiction to the amount of the penalty in cases of simple contract, upon the evidence of any one credible witness; and if no other provision is made for the appropriation of the penalty or forfeiture, one-half thereof shall belong to the Crown, and the other half shall belong to the private plaintiff, if any there is, and, if there is none, the whole shall belong to the Crown.

S.M., 1957, c. 33, s. 28.

Note: Certain penalties recoverable under The Summary Convictions Act.

### **Penalties, etc., to go to the revenue of government.**

**29** Any duty, penalty, or sum of money, or the proceeds of any forfeiture, that is by any enactment or law given to the Crown, shall, if no other provision is made respecting it, form part of the revenue of the government, and be accounted for and otherwise dealt with accordingly.

S.M., 1957, c. 33, s. 29.

### **Expenditure of appropriated public money.**

**30** Where a sum of the public money is by any Act appropriated for any purpose, or directed to be paid by the Lieutenant Governor, if no other provision is made respecting it, the sum shall be payable under warrant of the Lieutenant Governor, directed to the Minister of Finance, out of the Consolidated Fund; and all persons entrusted with the expenditure of any sum, or any part thereof, shall account for it in such manner and form, with such vouchers at such periods, and to such officers, as the Lieutenant Governor may direct.

S.M., 1957, c. 33, s. 30.

## SCHEDULE

Australia	Jamaica	Singapore
Bangladesh	Kenya	Sri Lanka
Barbados	Lesotho	Swaziland
Botswana	Malawi	Tanzania
Canada	Malaysia	Tonga
Cyprus	Malta	Trinidad and Tobago
Fiji	Mauritius	Uganda
Gambia	Nauru (Special Membership)	United Kingdom
Ghana	New Zealand	Western Samoa
Guyana	Nigeria	Zambia
India	Sierra Leone	

S.M. 1974, c. 59, s. 36





# **AN ACT RESPECTING THE OPERATION OF SECTION 23 OF THE MANITOBA ACT IN REGARD TO STATUTES.**

S.M. 1980, c. 3; C.C.S.M., c. S207

WHEREAS it is deemed advisable to make certain provisions for the proper implementation of section 23 of the Manitoba Act, being chapter 3 of the Statutes of Canada, 1870;

THEREFORE, HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

## **Definition of "official language".**

**1** In this Act "official language" means the English language or the French language.

S.M. 1980, c. 3, s. 1.

## **Interpretation where conflict.**

**2** Where the meaning of a provision of an Act in one official language conflicts with, is repugnant to or is inconsistent with the meaning of the corresponding provision of the Act in the other official language

- (a) the provision in the official language in which the Bill for the Act was printed when copies thereof were first distributed to the members of the assembly in the assembly prevails over the corresponding provision in the other official language; and
- (b) if the Bill for the Act was printed in both official languages when copies thereof were first distributed to the members of the assembly in the assembly, preference shall be given to that meaning of the provision that, according to the true spirit, intent and meaning of the Act as a whole, best insures the attainment of its objects.

S.M. 1980, c. 3, s. 2.

## **Certificate on introduction of Bill.**

**3 (1)** Where a Bill introduced in the Legislature is printed in only one of the official languages when copies thereof are first distributed to the members of the assembly in the assembly, the Clerk of the House shall endorse on the Bill a certificate certifying that the Bill was printed in that official language when copies thereof were first distributed to the members of the assembly in the assembly and, if the Bill is enacted, that certificate shall be printed on the Act in all copies thereof printed and published by or on behalf of the government.

## **Language for distribution of old statutes.**

**3 (2)** For greater certainty in the interpretation of the statutes of the province heretofore enacted, the Bills for all Acts heretofore enacted shall be conclusively deemed to have been printed in the English language when copies thereof were first distributed to the members of the assembly in the assembly.

S.M. 1980, c. 3, s. 3.

## MANITOBA ACT — SECTION 23

**Where translation of Bill deemed enacted.**

**4 (1)** Where a Bill for an Act that was introduced in the Legislature was printed in only one of the official languages and was enacted before a translation thereof into the other official language was available, if subsequently there is deposited with the Clerk of the House a translation of the Act into that other official language, certified to be a true translation of the Act by a person designated by the Speaker for the purpose of examining and certifying the translation of the Act, that translation of the Act into that other official language shall, for all purposes, be valid and of the same effect as the Act in the official language in which the Bill for the Act was printed, from and after the date of the enactment of the Act.

**Printing of translation.**

**4 (2)** Where the translation of an Act into an official language is deposited with the Clerk of the House in accordance with subsection (1), the Clerk of the House shall endorse on the translation a certificate certifying that the translation, certified by the person designated by the Speaker for the purpose of examining and certifying the translation of the Act, has been deposited with him as of the date on which it was so deposited, and that certificate, and the certificate of the person designated by the Speaker for the purpose of examining and certifying the translation of the Act shall be printed on the translation of the Act in all copies thereof printed and published by or on behalf of the government.

S.M. 1980, c. 3, s. 4.

**Reference to lines in Acts.**

**5** Where in an Act of the Legislature enacted before January 1, 1981, there is a reference to a specific line of a section, subsection, clause, sub-clause, sub-sub-clause, paragraph, sub-paragraph, schedule, form or other portion of that Act or any other Act of the Legislature enacted before January 1, 1981 (hereinafter in this section referred to as the "named Act") and there appears to be an inconsistency or ambiguity raised by the reference because that specific line in the named Act printed in one official language differs in content from the specific line in the named Act printed in the other official language, the reference shall be deemed to be a reference to that specific line in the named Act printed in the English language.

S.M. 1980, c. 3, s. 5.



JUDICIAL POWER



POUVOIR JUDICIAIRE



## JUDICIAL POWER

### Introduction

According to sections 92(14) and 101 of the British North America Act, the judicial power in Manitoba is made up of federal as well as provincial courts, with the latter subdivided into courts whose judges are appointed by the federal government and those whose judges are appointed by the province. The federal and provincial courts are as follows:

A. Federal courts:

1. Supreme Court of Canada
2. Federal Court of Canada

Note: Statutes creating these two courts are reproduced in volume 2 of this collection, pp. G11, and subs.

B. Provincial courts:

a) Whose judges are appointed federally:

1. Court of Appeal
2. Court of Queen's Bench for Manitoba
3. County Courts
4. County Court Judges' Criminal Courts
5. Surrogate Courts

b) Whose judges are appointed provincially:

1. Provincial Judges Courts

Statutes creating each of the provincial courts mentioned above are reproduced in part below.

In addition to these statutes, the Act for Expediting the Decisions of Constitutional and other Provincial Questions and the Federal Courts Jurisdiction Act reproduced in the chapter above under "General Constitutional Acts" should also be consulted. The federal Judges Act, reproduced in part in volume 2 of this collection, pp. G47 and subs., applies to provincial judges of Manitoba who are nominated by the federal government.

More information regarding the judicial power in general, the unitary and integrated character of the Canadian judicial struc-



ture, the principle of independence of the judiciary, and the role played by judges in Canada, can be found in volume 2 of this collection, pp. G5 to G7.

Selected references:

Read, Horace, and Barker, John M., The Judicial Systems of the Common Law Provinces and Federal Courts of Canada, Halifax, Dalhousie Law School, 1963? See the chapter on "The Courts of the Prairie Provinces."

## POUVOIR JUDICIAIRE

### Introduction

Vu les art. 92(14) et 101 de l'A.A.N.B., le pouvoir judiciaire manitobain comprend à la fois des tribunaux fédéraux et des tribunaux provinciaux. Les cours provinciales se subdivisent à leur tour en tribunaux dont les juges sont nommés par l'état fédéral et en tribunaux dont les juges sont nommés par la province. Ces tribunaux, tant fédéraux que provinciaux, sont les suivants:

#### A. Tribunaux fédéraux:

1. Cour suprême du Canada
2. Cour fédérale du Canada

Note: Les lois constitutives de ces deux cours sont partiellement reproduites aux pages G12 et suivantes du volume 2 de cette collection.

#### B. Tribunaux provinciaux:

- a) Tribunaux provinciaux dont les juges sont nommés par l'état fédéral:
  1. "Court of Appeal"
  2. "Court of Queen's Bench for Manitoba"
  3. "County Courts"
  4. "County Court Judges' Criminal Courts"
  5. "Surrogate Courts"
- b) Tribunaux provinciaux dont les juges sont nommés par la province:
  1. "Provincial Judges Courts"

Des extraits de la loi constitutive de chaque tribunal provincial mentionné plus haut sont reproduits ci-après.

En plus des lois reproduites dans ce chapitre, il y a lieu de consulter celles intitulées Act for Expediting the Decisions of Constitutional and Other Provincial Questions et Federal Courts Jurisdiction Act et déjà reproduites au chapitre "Lois constitutionnelles générales" du présent fascicule. La Loi sur les juges fédérale, reproduite en partie aux pages G48 et suivantes du volume 2 de cette collection, s'applique aussi aux juges des cours manitobaines nommés par l'état fédéral.

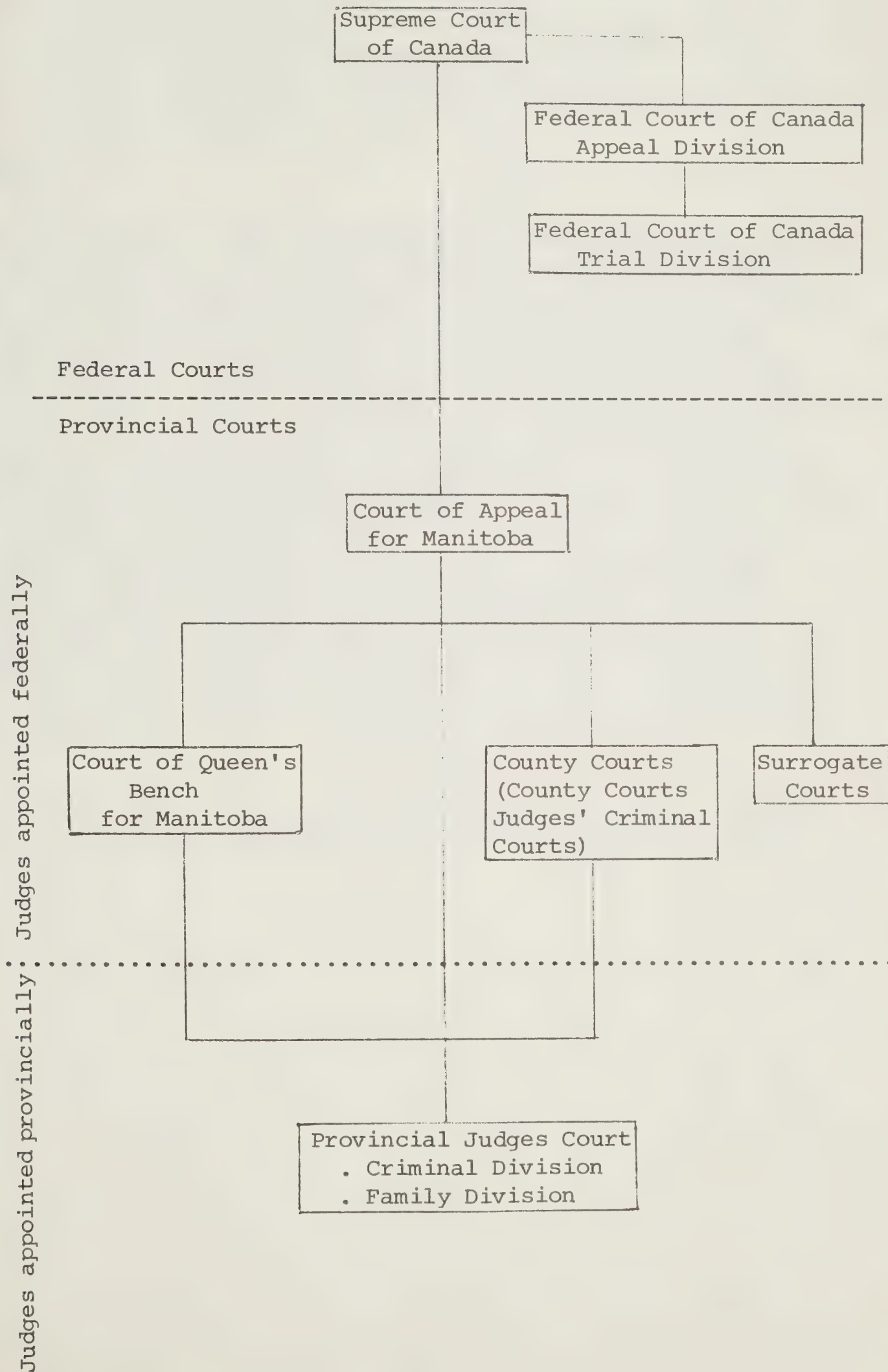
De plus amples renseignements sur l'ensemble du pouvoir judiciaire, sur le caractère unitaire et intégré de la hiérarchie judiciaire et sur l'indépendance et le rôle des juges au Canada, sont fournis aux pages G8 et suivantes du volume 2 de cette collection.

Source choisie

Read, Horace et Barker, John M., The Judicial Systems of the Common Law Provinces and Federal Courts of Canada, Halifax, Dalhousie Law School, 1963? Consulter le chapitre "The Courts of the Prairie Provinces".



# The Judicial System of Manitoba





## COURT OF APPEAL ACT

R.S.M. 1970, c. C240

Amended by 1971, c. 8; 1972, c. 32;  
1974, c. 59, s. 17; 1976, c. 69, s.11;  
1980, c. 58, s. 1

Note:

The Court of Appeal for Manitoba was established July 23, 1906 (S.M. 1906, c. 18). This superior court of record replaced the Court of Queen's Bench sitting en banc as a general court of appeal for the province. Appeals from its decisions lie to the Supreme Court of Canada, the general appeal court of last resort for the whole of Canada. It consists of a Chief Justice of Manitoba, five other judges called Judges of Appeal, and supernumerary judges, all appointed by the federal government. Their status is governed by a federal statute, the Judges Act (R.S.C. 1970, c. J-1), reproduced in volume 2 of this collection, pp. G47, and subs. It should be mentioned that each judge of the Court of Appeal is ex officio a judge of the Court of Queen's Bench and has the same jurisdiction and powers possessed by any judge of the Court of Queen's Bench. In addition, any judge of the Court of Queen's Bench may be requested to sit as a member of the Court of Appeal, in which case he has all the jurisdiction and powers of a judge of the Court of Appeal.

The Court of Appeal Act contains some 35 sections, and only provisions having constitutional law interest are reproduced below.



## COURT OF APPEAL ACT

R.S.M. 1970, c. C240

Modifié par 1971, c. 8; 1972, c. 32; 1974, c. 59, art. 17; 1976, c. 69, art. 11; 1980, c. 58, art. 1

Note:

La Cour d'appel du Manitoba ("Court of Appeal for Manitoba") a été constituée le 23 juillet 1906 (S.M. 1906, c. 18). Cette cour supérieure d'archives a remplacé la Cour du Banc de la Reine siégeant en banc comme tribunal général d'appel de cette province. Ses décisions peuvent faire l'objet d'un appel à la Cour suprême du Canada, le tribunal général d'appel de dernier ressort pour l'ensemble du Canada. Elle se compose du juge en chef du Manitoba, de cinq juges appelés juges de la Cour d'appel et de juges surnuméraires, tous nommés par l'état fédéral. Ces juges sont d'ailleurs soumis à l'application de la Loi sur les juges fédérale reproduite aux pages G48 et suivantes du volume 2 de cette collection. Il convient de souligner que tout juge de la Cour d'appel est, d'office, juge de la Cour du Banc de la Reine du Manitoba ("Court of Queen's Bench for Manitoba") et possède la même compétence et les mêmes pouvoirs que les juges de ce dernier tribunal. Par ailleurs, tout juge de la Cour du Banc de la Reine peut être invité à siéger comme juge de la Cour d'appel auquel cas il détient les mêmes pouvoirs que celui-ci.

Le Court of Appeal Act contient 35 articles environ. Seules les dispositions qui intéressent le droit constitutionnel sont reproduites ci-après.

## **AN ACT RESPECTING A COURT OF APPEAL FOR MANITOBA.**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### **Short title.**

- 1** This Act may be cited as: "The Court of Appeal Act".  
R.S.M., c. 48, s. 1.

### **"Court" defined.**

- 2** In this Act and the rules made hereunder, "court" means The Court of Appeal.  
R.S.M., c. 48, s. 2.

### **ORGANIZATION**

### **How court constituted.**

- 3(1)** The court heretofore created, under the name: "The Court of Appeal", shall exist and continue under that name, and shall consist of a chief justice, who shall be styled: "Chief Justice of Manitoba", and 5 other judges, who shall be styled Judges of Appeal.

### **Supernumerary judges.**

- 3 (1.1)** There is established for each office of judge of the court including the Chief Justice of the Court the additional office of supernumerary judge of the court.

### **A court of record.**

- 3(2)** The court shall be a superior court of record.

R.S.M., c. 48, s. 3; S.M. 1972, c. 32, s. 1; S.M.  
1974, c. 59, s. 17; S.M. 1976, c. 69, s. 11.

.....

### **Oath to be taken by judges.**

- 6** Every judge of the court, previous to entering upon the duties of his office, shall take the following oath, to be administered by the Lieutenant Governor, the chief justice of the court or any judge of the court:

I, \_\_\_\_\_ solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, exercise the powers and trusts reposed in me as Chief Justice of (or one of the judges of The Court of Appeal for) Manitoba. So help me God.

R.S.M., c. 48, s. 6; S.M. 1971, c. 8, s. 1.

.....

### **Place of sitting.**

- 12(1)** The court shall sit in The City of Winnipeg.

.....

## COURT OF APPEAL

### **Quorum of judges.**

**14** Any three of the judges of the court constitute a quorum and may lawfully hold the court.

R.S.M., c. 48, s. 15; am.

### **Opinion of majority to be opinion of court.**

**15** The determination of any question before the court shall be according to the opinion of the majority of the members of the court hearing the cause or matter.

R.S.M., c. 48, s. 16.

.....

### **Judgments by retired judges, etc.**

**20** A judge who

- (a) resigns his office; or
- (b) is appointed to any other court; or
- (c) ceases to hold office by reason of subsection (2) of section 99 of the British North America Act;

may, within three months after his resignation, appointment, or ceasing to hold office as aforesaid, give judgment in any cause or matter previously heard before him as if he had not so resigned, been appointed, or ceased to hold office.

R.S.M., c. 48, s. 21; R. & S., S.M., 1962, c. 8, s. 1.

.....

### **Judge not to sit in court reviewing his own verdict or decision.**

**22** A judge shall not sit on the hearing of an appeal from a judgment or order made by himself.

R.S.M., c. 48, s. 22.

### **Appointment of ad hoc judge.**

**23** Any judge of the Court of Queen's Bench may, at the request of the Chief Justice of Manitoba or, in his absence, at the request of the senior judge of the court, sit as a member of the court and take part in the hearing and decision of any appeal or matter coming before the court and otherwise in relation thereto, and for all such purposes he has all the jurisdiction, powers, rights, privileges, and immunities, of a judge of The Court of Appeal.

R.S.M., c. 48, s. 24; S.M. 1971, c. 8, s. 4.

### **Jurisdiction of the judges.**

**24** The Chief Justice of Manitoba and the other judges of appeal shall also be, ex officio, judges of the Court of Queen's Bench, and each of the judges has all the jurisdiction, both civil and criminal, possessed by any judge of the Court of Queen's Bench; and he may, in addition to his duties as a judge of The Court of Appeal, preside over any trials of civil or criminal cases in the Court of Queen's Bench and over any trials at bar, and over the trials of any election petitions, and for all purposes has all the powers, rights, privileges, and immunities, of a judge of the Court of Queen's Bench.

R.S.M., c. 48, s. 25; S.M. 1971, c. 8, s. 5.



## COURT OF APPEAL

### **Court of Appeal to exercise appellate jurisdiction.**

**25(1)** In addition to the jurisdiction and powers that the court has under any other Act, or under any other provision of this Act, the court has all the jurisdiction and powers possessed by the Court of Queen's Bench sitting en banc immediately prior to the twenty-third day of July, 1906.

Am.

### **Court of Queen's Bench en banc not to exercise appellate jurisdiction.**

**25(2)** The Court of Queen's Bench en banc does not have jurisdiction to entertain an application for a new trial, and does not have any appellate jurisdiction.

R.S.M., c. 48, s. 26; am.

.....



## QUEEN'S BENCH ACT

R.S.M. 1970, c. C280

Amended by 1970, c. 79; 1972, c. 7; 1973, c. 15; 1974, c. 15; 1975, c. 42, s. 16; 1976, c. 13, c. 71, s. 1, and c. 73; 1977, c. 53, s. 1, and c. 57, c. 8; 1978, c. 27, s. 1, c. 28, and c. 49, s. 27; 1980, c. 21, ss. 3 and 4, c. 54, s. 1, and c. 58, ss. 2 to 7

### Note:

The Court of Queen's Bench for Manitoba is a court of original jurisdiction of common law for the province. It has jurisdiction in civil and criminal matters. This court of record has the jurisdiction and powers as those exercised on July 15, 1870, by the superior courts of common law, the Court of Chancery and the Court of Probate in England. Its jurisdiction is specified in its constitutive statute, and other statutes referred to in this statute. It has concurrent jurisdiction with the Surrogate Court in testamentary matters. As a superior court it has jurisdiction in prohibiting inferior courts to exceed their jurisdiction. According to this statute and the constitutive statutes of county and surrogate courts, an action brought in the Court of Queen's Bench can be transferred to a county or a surrogate court providing it has the appropriate jurisdiction and the consent of all the parties to the action. This statute also provides for the establishment of a Family Law Division of the Court in the district of St. Boniface under the supervision of a committee entrusted to monitor and evaluate the operation of this particular division and to report to the Minister of Justice of Canada and the Attorney-General of Manitoba. Furthermore, the Court of Queen's Bench consists of a Chief Justice, 9 puisne justices, and supernumerary judges, all appointed by the federal government, whose status is governed by the federal Judges Act (R.S.C. 1970, c. J-1), reproduced in volume 2 of this collection, pp. G47, and subs. In pursuance of section 8 of the Queen's Bench Act, judges may hold courts in and for the North-



West Territories that may be created under the authority of the Governor-General or the Parliament of Canada. According to section 9 of this statute, each judge of a county court is a local judge of the Court of Queen's Bench, except in the Eastern Judicial District.

This statute contains about 120 sections, and only provisions having constitutional law interest are reproduced here.

## QUEEN'S BENCH ACT

R.S.M. 1970, c. C280

Modifié par 1970, c. 79; 1972, c. 7; 1973, c. 15; 1974, c. 15; 1975, c. 42, art. 16; 1976, c. 13, c. 71, art. 1 et c. 73; 1977, c. 53, art. 1 et c. 57, art. 8; 1978, c. 27, art. 1, c. 28 et c. 49, art. 27; 1980, c. 21, art. 3-4, c. 54, art. 1 et c. 58, art. 2-7

Note:

La Cour du Banc de la Reine du Manitoba ("Court of Queen's Bench for Manitoba") est le tribunal de première instance de droit commun de cette province. Elle a compétence en matière civile et criminelle. Ce tribunal d'archives exerce la même compétence et les mêmes pouvoirs que ceux détenus, le 15 juillet 1870, par les cours supérieures de droit commun, par la "Court of Chancery" et par la "Court of Probate" d'Angleterre. La compétence matérielle de cette cour est décrite dans sa loi constitutive et dans certaines autres lois auxquelles cette dernière réfère. Elle exerce une juridiction concurrente avec le tribunal des successions ("Surrogate Court") en matière testamentaire. Comme cour supérieure, elle a compétence pour empêcher les tribunaux d'instance inférieure d'excéder leur juridiction. En vertu de la présente loi et des lois constitutives des cours de comté et des tribunaux des successions, une cause inscrite devant la Cour du Banc de la Reine peut être renvoyée devant la cour de comté ou le tribunal des successions pourvu que l'un ou l'autre de ces tribunaux ait juridiction et que toutes les parties à l'action y consentent. La présente loi prévoit aussi l'établissement d'une division de la famille de cette cour dans le district de St-Boniface sous la supervision d'un comité chargé d'évaluer le fonctionnement de cette division particulière et de faire rapport au Ministre de la justice du Canada et au Procureur général du Manitoba. Par ailleurs, la Cour du Banc de la Reine se compose d'un juge en chef, de neuf juges puînés et de juges surnuméraires, tous nommés par l'état fédéral. Ces juges sont soumis à l'application de la Loi sur les juges fédérale reproduite aux pages G48 et suivantes du volume 2 de cette collection. Suivant l'art. 8 de la présente loi, ils peuvent être appelés à agir comme

Juges des tribunaux des Territoires du Nord-Ouest établis sous l'autorité du gouverneur général ou du Parlement du Canada (art. 8). Aux fins de l'art. 9, tout juge d'une cour de comté est réputé être un juge local de la Cour du Banc de la Reine, sauf dans le district judiciaire d'Eastern

La présente loi renferme près de 120 articles. Seules sont reproduites les dispositions susceptibles de présenter un intérêt en droit constitutionnel.



**AN ACT RESPECTING HER MAJESTY'S COURT OF QUEEN'S BENCH  
FOR MANITOBA.**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

**Short title.**

**1** This Act may be cited as: "The Queen's Bench Act".  
R.S.M., c. 52, s. 1.

.....

**ORGANIZATION**

**Court of Queen's Bench and orders, etc., thereof continued.**

**3** Her Majesty's Court of Queen's Bench for Manitoba shall exist and continue under the name and style: "Her Majesty's Court of Queen's Bench for Manitoba"; and all commissions, rules, orders, and regulations, granted or made in, by, or respecting, the court, or the judges or officers thereof, now existing or being in force, shall remain and continue in force until altered, changed, rescinded, or otherwise determined, according to law, except as provided in this Act.

.....

**JUDGES**

**Judges and powers.**

**6** The court shall consist of a chief justice, who shall be styled "Chief Justice of the Queen's Bench", and 9 puisne justices, who shall be styled and be the judges of the court; and the chief justice and justices of the court shall have, use, exercise, and enjoy, all the powers, rights, incidents, privileges, and immunities, of a judge of a superior court of record, and all other powers, rights, incidents, privileges and immunities, as amply and as fully to all intents and purposes as they were, on and prior to the fifteenth day of July in the year 1870, used, exercised, and enjoyed, by any of the judges of any of the superior courts of law or equity in England.

R.S.M., c. 52, s. 6; S.M., 1964, (2nd Sess.), c. 4, s. 1; S.M. 1974, c. 15, s. 1; S.M. 1980, c. 58, s. 2.

**Supernumerary judges.**

**6.1** There is established for each office of judge of the court the additional office of supernumerary judge of the court.

S.M. 1972, c. 7, s. 1.

**Oath to be taken by judges.**

**7** Every judge, previous to entering upon the duties of his office, shall take the following oath, to be administered by the Lieutenant Governor, the chief justice of the court or any puisne judge of the court:

I, \_\_\_\_\_, solemnly and sincerely promise and swear that I will duly and faithfully, and to the best of my skill and knowledge, exercise the powers and trusts reposed in me as chief justice (or one of the puisne judges) of Her Majesty's Court of Queen's Bench of Manitoba. So help me God.

R.S.M., c. 52, s. 7.

QUEEN'S BENCH

**Judges may hold courts in and for North-West Territories.**

8        The judges, or any one of them, may hold, in or for the North-West Territories, any court or courts that may be created under the authority of the Governor-General, or of any Act of the Parliament of Canada, and, in and for those territories, or in respect of matters arising or transpiring therein, may discharge all such judicial functions as may be assigned to them, or one or more of them, by the Governor-General or the parliament aforesaid.

R.S.M., c. 52, s. 8; am.

**County Court judges as local judges.**

9 (1)        Except in the Eastern Judicial District, each judge of a county court is a local judge of the court within the judicial district within which his commission has given him jurisdiction as a judge of the county court.

**Chief County Court Judge.**

9 (2)        Except in the Eastern Judicial District, the Chief County Court Judge for Manitoba is a local judge of the court.

**County court judges acting in other judicial districts.**

9 (3)        Where a judge of a county court is requested under section 9 of The County Courts Act to hold county court or perform any other duty of a county court judge in any judicial district other than the Eastern Judicial District and other than the judicial district within which his commission has given him jurisdiction as a judge of the county court, the judge of the county court, during the period for which he has been requested to hold county court or perform any other duty of a county court judge in that other judicial district, is a local judge of the court with the same capacity, jurisdiction and authority as any other local judge of the court.

**Powers of local judges.**

9 (4)        In Actions, causes and matters in the court, a local judge of the court has, subject to the rules, power and authority to do and perform and transact all such acts and business in respect thereto as he is or may be, by statute or the rules, empowered to do, perform or transact.

S.M. 1974, c. 15, s. 2.  
.....

JURISDICTION

**Jurisdiction of court.**

50        The court is and shall continue to be a court of record of original jurisdiction, and shall possess and exercise all such powers and authorities as by the laws of England are incident to a superior court of record of civil and criminal jurisdiction in all matters civil and criminal whatsoever, and shall have, use, enjoy, and exercise, all the rights, incidents, and privileges, of those courts as fully to all intents and purposes as they were, on the fifteenth day of July in the year 1870, possessed, used, exercised, and enjoyed, by any of Her late Majesty Queen Victoria's superior courts of common law at Westminster, or by the Court of Chancery at Lincoln's Inn, or by the Court of Probate, or by any other court in England having cognizance of property and civil rights, and of crimes and offences.

R.S.M., c. 52, s. 49; am.  
.....



## QUEEN'S BENCH

### Of what court may hold plea.

**51(1)** The court shall hold plea in all, and all manner of actions, suits, and proceedings, cause and causes of action, matters, suits, and proceedings, whether at law, in equity or probate, or howsoever otherwise, as well criminal as civil, real, personal, and mixed or otherwise howsoever; and shall proceed in all such actions, suits, proceedings, and causes by such process and course of proceedings as are provided by law, and as shall tend with justice and dispatch to determine them.

### Idem.

**51(2)** The court shall hear, decide, and determine, all issues of law or of fact when the issue of fact is submitted to it by law.

.....

### Alimony.

**52** The court has jurisdiction to grant alimony to any wife who would be entitled to alimony by the law of England, or to any wife who would be entitled by the law of England to a divorce, and to alimony as incident thereto, or to any wife whose husband lives separate from her without any sufficient cause and under circumstances that would entitle her, by the law of England, to a decree for the restitution of conjugal rights; and alimony, when granted, shall continue until the further order of the court.

R.S.M., c. 52, s. 51; am.

Note: As to registration of alimony judgments - See The Judgments Acts.

### Criminal conversation.

**53(1)** The court has jurisdiction to entertain an action for criminal conversation.

Am.

.....

### Leases and sales of settled estates, etc.

**55(1)** The court has the same jurisdiction as the Court of Chancery had in England, on the fifteenth day of July in the year 1870, in regard to leases and sales of settled estates, and in regard to enabling infants, with the approbation of the court, to make binding settlements of their real and personal estate on marriage, and in regard to questions submitted for the opinion of the court in the form of special cases on the part of such persons as may by themselves, their committees or guardians, or otherwise, concur therein.

Am.

.....

### Wills.

**56** The court has jurisdiction to try the validity of last wills and testaments, whether they refer to real or personal estate, and whether probate of the will has been granted or not, and to pronounce such wills and testaments to be void for fraud and undue influence or otherwise, in the same manner, and to the same extent, as the court has jurisdiction to try the validity of deeds and other instruments.

R.S.M., c. 52, s. 55; am.

### Further jurisdiction.

**57** The court also has jurisdiction

- (a) in matters testamentary, as provided by The Surrogate Courts Act;
- (b) in respect of infants and lunatics and their property and estates, as provided by The Child Welfare Act and The Mental Health Act;

.....



QUEEN'S BENCH

(c) in respect of partitions and sale of real estate, as provided in The Law of Property Act;

and otherwise as provided by any statute of the province, or by the law of England as it stood upon the fifteenth day of July in the year 1870.

R.S.M., c. 52, s. 56; am.

**Declaration as to validity of provincial statute.**

**62(1)** The court has jurisdiction to entertain an action at the instance of either the Attorney-General of Canada or the Attorney-General of Manitoba, for a declaration as to the validity of any statute, or any provision in any statute, of the Legislature though no further relief be prayed or sought; and the action is sufficiently constituted if the two officers aforesaid are parties thereto.

Am.

**Appeal.**

**62(2)** A judgment in the action is appealable like any other judgment of the court.

Am. R.S.M., c. 52, s. 61; am.

Note: See sec 63(8).

See also An Act for expediting the Decision of Constitutional and other Provincial Questions.

.....

RESIGNATION OR DEATH OF JUDGE

**Judgments by retired judges, etc.**

**70(1)** A judge who

- (a) resigns his office; or
- (b) is appointed to any other court; or
- (c) ceases to hold office by reason of subsection (2) of section 99 of the British North America Act;

may, within eight weeks after his resignation, appointment, or ceasing to hold office as aforesaid, give judgment in any cause, action, or matter previously tried or heard before him, as if he had not so resigned, been appointed, or ceased to hold office.

R. & S., S.M., 1962, c. 10, s. 2.

**Death of judge.**

**70(2)** Where a judge has heard a cause, action, or matter, and dies without delivering judgment or where, in cases to which subsection (1) applies, a judge fails to deliver judgment within the time thereby limited, the cause, action, or matter, shall be deemed to be and be dismissed without costs to any party, and the proper officer of the court shall forthwith, on application of any party to the proceedings, enter judgment accordingly; and an appeal lies from such judgment in the same manner as if the judgment had been delivered by the judge, but on such an appeal there shall be no inference that the judgment was proper on the merits.

Am. R.S.M., c. 52, s. 69; am.

.....

## QUEEN'S BENCH

### CONSTITUTIONAL QUESTIONS

#### Notice to be given to Attorneys-General of Canada and of Manitoba.

**73(1)** Where in any action or other proceeding, the constitutional validity of any Act, or any provision in any Act, of the Parliament of Canada or of the Legislature, is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney-General of Canada, and the Attorney-General of Manitoba.

Am.

.....

### APPEALS

#### Orders not appealable.

**100** No order made by the court, or a judge thereof, by the consent of parties, or as to costs only which by law are left to the discretion of the court, is subject to any appeal, except by leave of the court or judge making the order.

R.S.M., c. 52, s. 98; am.

#### Court of Appeal may set aside or vary decision.

**101** Save as provided in section 100, every rule, order, verdict, judgment, decree, or decision, made, given, rendered, or pronounced, by the court or a judge thereof, may be set aside, varied, amended, or discharged, and every verdict of a jury may be set aside in whole or in part on appeal, upon notice, by The Court of Appeal.

R.S.M., c. 52, s. 99.

.....

#### Transfer of action to county court.

**106.1 (1)** Where an action brought in the court could have been brought, either with or without the consent of all the parties thereto, in a county court, any party to the action may, with the consent of all other parties to the action, apply to the court at any time before the action has been set down for trial to have the action transferred to a county court and the court shall order the action to be transferred to the appropriate county court.

S.M. 1976, c. 13, s. 7.

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#### Definitions.

**107** In this section and in sections 108 to 118

- (a) "district" means the area of the province comprising the County Court District of St. Boniface;
- (b) "division" means The St. Boniface Family Law Division established under section 108;
- (c) "division administrator" means the division administrator appointed under section 117;
- (d) "division committee" means the St. Boniface Family Law Division Monitoring Committee established under section 115;
- (e) "judge" means a judge of the court or a local judge of the court;
- (f) "proceeding" means any action, proceeding or application.

S.M. 1976, c. 73, s. 3.

## QUEEN'S BENCH

### Division established.

108 There shall be a division of the court known as: "The St. Boniface Family Law Division".

S.M. 1976, c. 73, s. 3.

### Judges in division.

109 (1) Every judge of the court is a judge in the division.

### Local judges.

109 (2) Notwithstanding any other provision of this Act, each county court judge in Manitoba is a local judge of the court in the division and as such may sit as a judge of the court in the division and may hear and determine any proceeding in the division.

S.M. 1976, c. 73, s. 3.

### Proceedings under provincial Acts.

110 Notwithstanding any provision of this or any other Act of the Legislature respecting the court or tribunal in or to which the proceeding should be brought or made, the following proceedings shall be brought and made in the division:

- (a) Every proceeding under The Child Welfare Act in respect of a child who resides within the district except a proceeding in respect of the adoption of a child.
- (b) Every proceeding in respect of the adoption of a child under The Child Welfare Act where the applicant resides within the district.
- (c) Every proceeding under subsection 2.1 (2) or 4 (3) of The Change of Name Act by an applicant who resides within the district.
- (d) Every proceeding under section 18, 22 or 23 of The Devolution of Estates Act where the deceased resided, at the time of his death, within the district and any of the land affected by the action is situated within the district.
- (e) Every proceeding under section 6, 11, 12 or 13 of The Dower Act in respect of land within the district.
- (f) Every proceeding under The Dower Act other than those mentioned in clause (e) where the applicant resides within the district.
- (g) Every proceeding under The Law of Property Act for partition or sale of land all or part of which is situated within the district where the parties, or two of the parties to the proceeding opposite in interest, are or were married to one another and either of those parties reside within the district.
- (h) Every proceeding under section 8 of The Married Women's Property Act where the applicant resides within the district.
- (i) Every proceeding under The Family Maintenance Act where the applicant resides within the district.
- (j) Every proceeding under The Marital Property Act where the applicant resides within the district.

S.M. 1976, c. 73, s. 3; S.M. 1977, c. 53, s. 1;  
S.M. 1978, c. 27, s. 1.



## . QUEEN'S BENCH

### Corrections Act.

111 For the purposes of subsections 13 (3), (4) and (5) and section 15 of The Corrections Act, any judge in the division shall be deemed to be a family court judge. S.M. 1976, c. 73, s. 3.  
 .....

### Appeal.

114 Every rule, order, verdict, judgment, decree or decision made, given, rendered or pronounced in the division by the court or a judge is subject to appeal as though it were made, given, rendered or pronounced outside the division by the court or a judge thereof.

S.M. 1976, c. 73, s. 3.

### Division committee.

115 (1) There shall be established a committee to be known as: "The St. Boniface Family Law Division Monitoring Committee" composed of

- (a) 1 person designated by the Minister of Justice for Canada;
- (b) 2 persons designated by the Attorney-General of Manitoba;
- (c) 1 person designated by the Family Law subsection of The Manitoba Bar Association; and
- (d) the division administrator.

### Functions of division committee.

115 (2) The division committee shall

- (a) monitor and evaluate the effect of the division in the law of Manitoba and assist persons designated by the Government of Canada or the Government of Manitoba to monitor and evaluate the effect of the division in the law of Manitoba; and
- (b) make recommendations to the Attorney-General with respect to the operation and functioning of the division and report to the Attorney-General and to the Minister of Justice of Canada as to the success of the division.

S.M. 1976, c. 73, s. 3.

### Retention of support services.

116 The Attorney-General may

- (a) establish support services to assist the division in the adjudication of proceedings before it and to assist parties to proceedings before the division, and without limiting the generality of the foregoing, establish family counselling services, enforcement services and children's advocate services;
- (b) retain the services of persons, associations and established agencies or any of them for the purposes of providing support services mentioned in clause (a); or
- (c) do both of those things.

S.M. 1976, c. 73, s. 3.  
 .....

QUEEN'S BENCH

**Suspension of sections 107 to 116.**

118 (1) The Lieutenant Governor in Council may suspend the effect of sections 107 to 116 and, subject to subsections (2), (3) and (4), those sections do not have any force or effect during any period when they are suspended under this section.

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**Report of project committee.**

118 (4) Notwithstanding that the effect of sections 107 to 116 have been suspended, the division committee may, report to the Minister of Justice of Canada and to the Attorney-General of Manitoba with its recommendations as to the success of the division.

S.M. 1976, c. 73, s. 3.

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## COUNTY COURTS ACT

R.S.M. 1970, c. C260

Amended by R.S.M. 1970, c. Z-1, s. 1;  
S.M. 1970, c. 25; 1971, c. 7, c. 18, c. 77,  
and c. 82, s. 12; 1972, c. 38; 1974, c. 16;  
1975, c. 42, s. 15; 1976, c. 14; 1977, c. 20;  
1978, c. 49, s. 25; 1979, c. 35; 1980, c. 55,  
s. 13, and c. 58, ss. 9 to 13.

### Note:

The County Court is a court of record. Its judges derive their authority from this statute, the County Court Judges' Criminal Courts Act, reproduced below, and the Criminal Code. According to this statute, the County Court has a limited jurisdiction in civil matters, generally in actions where the sum claimed does not exceed \$10,000. Moreover, it has jurisdiction in summary procedure where the claim does not exceed \$1000. An action commenced in the County Court can be transferred to the Court of Queen's Bench or the Provincial Judges Court (Family Division), as the case may be, and likewise, an action brought in the Court of Queen's Bench or the Provincial Judges Court can be transferred to the County Court. The decisions of the County Court in civil matters can be appealed to the Court of Appeal of Manitoba as provided by law. Furthermore, the County Court Judges' Criminal Courts Act authorizes any judge of the County Court to try alone any person charged for a criminal offence when that person consents to be tried speedily and without a jury. Finally, under section 747(c) of the Criminal Code (R.S.C. 1970, c. C-34), the County Court hears appeals from decisions of the Provincial Judges Court in summary convictions matters.

Judges of the County Court are appointed by the federal government and their status is governed by the federal Judges Act (R.S.C. 1970, c. J-1). They are responsible to the Chief County Court Judge, who is also the chairman of the Board of County Court



Judges established by this statute, with power to make rules. Each judge of the County Court can also act as a local judge of the Court of Queen's Bench under the Queen's Bench Act, and as a judge of the Surrogate Court under the provisions of the Surrogate Courts Act.

The County Courts Act contains about one hundred sections, and only provisions of a constitutional law interest are reproduced here.

## COUNTY COURTS ACT

R.S.M. 1970, c. C260

Modifié par R.S.M. 1970, c. Z-1, art. 1; S.M. 1970, c. 25; 1971, c. 7, c. 18, c. 77 et c. 82, art. 12; 1972, c. 38; 1974, c. 16; 1975, c. 42, art. 15; 1976, c. 14; 1977, c. 20; 1978, c. 49, art. 25; 1979, c. 35; 1980, c. 55, art. 13 et c. 53, art. 9-13

Note:

La Cour de comté ("County Court") est un tribunal d'archives. Les juges qui la composent tirent principalement leur compétence de la présente loi, du County Court Judges' Criminal Courts Act, reproduit plus loin, et du Code criminel. En vertu de la présente loi, cette cour exerce une compétence limitée en matière civile. De façon générale, les causes civiles dans lesquelles la somme réclamée n'excède pas \$10,000.00 relèvent de sa juridiction. En outre, elle entend de façon sommaire les réclamations dont le montant n'excède pas \$1,000.00. Les causes inscrites devant cette cour peuvent cependant être renvoyées devant la Cour du Banc de la Reine ou devant la division de la famille de la Cour des juges provinciaux ("Provincial Judges Court"), selon le cas. De même, les actions instruites devant la Cour du Banc de la Reine ou devant la Cour des juges provinciaux peuvent être référées à la Cour de comté. Les décisions rendues par cette cour en matière civile peuvent faire l'objet d'un appel à la Cour d'appel du Manitoba dans les cas prévus par la présente loi. Par ailleurs, le County Court Judges' Criminal Courts Act autorise tout juge de la cour de comté à juger, seul, un prévenu inculpé d'un acte criminel qui a choisi un procès expéditif sans jury. Enfin, en vertu de l'art. 747(c) du Code criminel, il peut y avoir appel à la Cour de comté des décisions rendues par la Cour des juges provinciaux en matière de déclarations sommaires de culpabilité.

Les juges de la Cour de comté sont nommés par l'état fédéral et sont soumis à l'application de la Loi sur les juges fédérale. Ils relèvent du juge en chef de cette cour. Celui-ci préside d'ailleurs le Conseil des juges des cours de comté constitué par la présente loi et doté d'un pouvoir général de réglementation. Les juges des cours de comté peuvent

également agir comme juges locaux de la Cour du Banc de la Reine en vertu du Queen's Bench Act et comme juges du tribunal des successions suivant les dispositions du Surrogate Courts Act.

Le County Courts Act renferme une centaine d'articles. Seules les dispositions qui présentent un intérêt en droit constitutionnel sont reproduites.



## AN ACT RESPECTING COUNTY COURTS.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### Part I

#### Short title.

**1** This Act may be cited as: "The County Courts Act".

R.S.M., c. 50, s. 1.

Note: History of Act - S.M. 1873, c. 6; S.M. 1879, c. 1; C.S.M. 1880, c. 34; S.M. 1882, c. 33, S.M. 1884, c. 52; S.M. 1887, c. 9; R.S.M. 1891, c. 33; R.S.M. 1902, c. 38; R.S.M. 1913, c. 44; C.A. 1924, c. 44; S.M. 1934, c. 5; R.S.M. 1940, c. 42; R.S.M. 1954, c. 50.

.....

### ORGANIZATION OF COURTS

#### COUNTY COURTS

#### A court for each County Court district.

**3** There shall be in and for every County Court district a court of record to be called: "County Court of (naming the County Court district)".

R.S.M., c. 50, s. 3; am. S.M., 1960, c. 78, s. 6.

.....

#### Chief Judge.

**8 (3)** In addition to the judges otherwise provided for in this Act, there shall be a Chief County Court judge for the province.

#### Authority of Chief Judge.

**8 (4)** The Chief County Court Judge is, and has authority as, a judge of the county courts in all judicial districts, and may preside over any county court in the province.

#### Supervision by Chief County Court Judge.

**8 (5)** The Chief County Court Judge has general supervisory powers in respect of all the other county court judges, and may assign any county court judge to any sitting of a county court, including chambers, or to any sitting of a County Court Judges' Criminal Court.

#### Delegation of authority.

**8 (6)** The Chief County Court Judge may, from time to time, designate any judge to act in his place for any or all purposes.

S.M. 1971, c. 77, ss. 1-2; S.M. 1974, c. 16,  
ss. 1-2; S.M. 1975, c. 42, s. 15(1).

#### Supernumerary judges.

**8.1** There is established for each office of judge of a county court in the province, including the Chief County Court Judge, the additional office of supernumerary judge of the court.

S.M. 1976, c. 14, s. 2.

.....

## COUNTY COURTS

### Judge's oath of office.

11 Each judge shall, before entering on the duties of his office, take the following oath before the Lieutenant Governor, the Chief Justice of Manitoba, any judge of The Court of Appeal, the Chief Justice of the Queen's Bench, any judge of the Queen's Bench, the Chief County Court Judge, any county court judge of the province or some person appointed by the Lieutenant Governor in Council to administer the oath:

I, \_\_\_\_\_, solemnly and sincerely promise and swear that I will duly and faithfully and to the best of my skill and knowledge execute the duties and powers imposed on me as Chief County Court Judge for the Province of Manitoba (or as a judge of the County Courts of the judicial district). So help me God.

R.S.M. c. 50, s. 11; S.M. 1974, c. 16, s. 3; 1977, c.20, s. 1; 1979, c. 35, s. 2.

### Judge not to practise law.

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13 No judge shall, directly or indirectly, practise law or conduct any business in the profession of law.

R.S.M., c. 50, s. 13.

## BOARD OF COUNTY COURT JUDGES

### The Board of County Court Judges.

14(1) The County Court judges of the province shall constitute a board to be known as: "The Board of County Court Judges".

### Chairman of the Board.

14(2) The Chief County Court Judge shall, whenever necessary, and at least once in each year, and, in his absence, inability, refusal, or neglect to act, any two judges may, call together a meeting of the board for the purposes of this or any other Act; and the Chief County Court Judge shall be the chairman of the meeting unless he is absent, in which case the other judges may elect one of their number to preside.

Am. S.M., 1964, (1st Sess.), c. 11, s. 5.

### Power of the board to make rules.

14(3) The board, or a majority of them, may at any meeting make rules,

- (a) subject to section 16.1, regulating the sittings of the courts and judges;
- (b) regulating the pleading, practice, and procedure, in the courts;
- (c) prescribing a tariff of fees to be allowed to barristers and attorneys, and appraisers, in actions and proceedings in the courts;
- (d) regulating the form and execution of any process of the courts; and
- (e) generally for regulating any matters relating to practice and procedure, or to the duties of the officers of the courts or to the costs of actions and proceedings therein; and every other matter deemed expedient for advancing the remedies of suitors, and carrying into effect the provisions of this or any other Act relating to proceedings in County Courts.
- (f) prescribing forms for use under Part II



## COUNTY COURTS

- (g) respecting any other matter or thing that the board may deem necessary or advisable for carrying into effect the provisions of Part II.

Note: Power to Repeal or Amend Rules - See sec. 20 of The Interpretation Act.  
Continuity of Rules - See sec. 26 of The Interpretation Act.

R.S.M. c. 50, s. 14; R.S.M. 1970, c. Z-1, s. 1;  
S.M. 1971, c. 77, s. 3; S.M. 1972, c. 38, s. 1;  
S.M. 1980, c. 58, s. 8.

### Effect of rules.

15 Subject to The Regulations Act, all rules and all amendments, alterations, or additions to the rules, made by the judges under section 14 have the same force and effect as if they were embodied in, and formed part of, this Act.

S.M. 1970, c. 25, s. 1.

## JURISDICTION OF COURT

### JURISDICTION OVER ACTIONS

#### Jurisdiction over.

**27(1)** The courts, in addition to the jurisdiction given by any Act having the force of law in the province, have jurisdiction in

- (a) actions arising out of contract, expressed or implied, and actions of debt arising by statute where the sum claimed does not exceed \$10,000.00;
- (b) personal actions of tort, excepting actions for malicious prosecution, false imprisonment, criminal conversation, or seduction, where the damage claimed does not exceed \$10,000.00;
- (c) all actions for the recovery of personal property, including actions of replevin and for detinue, where the value of the property claimed does not exceed \$10,000.00;

Note: As to replevin - See The Replevin Act.

- (d) interpleader proceedings
  - (i) where the person seeking relief is under liability for any debt, money, or chattels, to an amount or value not exceeding \$10,000.00, for and in respect of which adverse claims therefor are made by two or more persons; or
  - (ii) where the applicant is a bailiff, sheriff, or other officer charged with the execution of process and claim is made to any money or chattels taken or intended to be taken in the execution, or to the proceeds or value of any such chattels, by a person other than the person against whom the process issued, when the amount of the money or proceeds, or the value of the chattels claimed, does not exceed \$10,000.00;
- and
- (e) garnishment proceedings for the attachment of all debts due, obligations and liabilities owing, payable, or accruing due, by a third person to a person against whom an action for a debt or liquidated demand is or is about to be commenced in the court, or against whom a judgment has been given;

Note: Judge's Order Unnecessary - See Dow v. Dayment, 32 M.R. 402.

- (f) attachment proceedings for the recovery of a sum not exceeding \$10,000.00 for a debt or damages arising upon a contract, expressed or implied, or upon a judgment against the personal property of one who, being a non-resident of the province, is so indebted or liable to a resident of the province; or who, with intent to defeat or defraud his creditors or those who have causes of action against him,



## COUNTY COURTS

- (i) absconds or is about to abscond from the province, leaving personal property; or
  - (ii) attempts to remove personal property out of the province or is immediately about to make such removal; or
  - (iii) assigns, transfers, disposes of, or secretes, any of his property or is about to do so; or
  - (iv) keeps concealed within the province to avoid service of process;
  - (g) actions for trespass or injury to land, or for the obstruction or interference of a right-of-way or easement where the claim does not exceed \$10,000.00;
  - (h) the dissolution of partnerships and the taking of partnership accounts;
  - (i) applications made under section 70 of The Trustee Act; and
  - (j) any actions of the types mentioned in clause (a), (b), (c), (d), (f) or (g) where the claim or any set off or counterclaim raised in the pleadings exceeds \$10,000.00 or may result in a judgment for more than \$10,000.00 unless one of the parties thereto applies under section 43.1 to have the action transferred to the Court of Queen's Bench.
- S.M. 1958 (1st Sess.), c. 9, s. 2; R.S.M. 1970, c. Z-1, s. 1(c); S.M. 1970, c. 25, s. 2; S.M. 1976 c. 14, s. 5; S.M. 1980, c. 58, s. 11.

**Incidental power of court.**

**27(2)** In any such action the court has all the powers which the Court of Queen's Bench would have in case the action had been brought in that court, including, without limiting the generality of the foregoing, the power

- (a) to hear and determine a set-off or counter-claim;
- (b) to permit the examination of persons for discovery and the physical examination of parties by medical practitioners;
- (c) to grant relief against penalties and forfeitures or against the acceleration of payment in contracts;
- (d) to order the endorsement of negotiable instruments and the execution of contracts;
- (e) to issue process by way of equitable execution and appoint a receiver to enforce the same;
- (f) to take accounts;
- (g) to cancel contracts on the grounds of fraud or misrepresentation, and rectify contracts on the ground of mistake; and
- (h) to set aside an assignment that constitutes a fraud on creditors or gives a preference within the meaning of The Assignments Act;

so that full relief, legal and equitable, may be given to all parties in the action.

**Certain actions excepted.**

**27(3)** Save as permitted by subsection (2), the court does not have jurisdiction to entertain actions for injunctions, specific performance of contracts, foreclosure or sale of mortgaged premises, ejectment, recovery of land, administration of estates or trusts, trying the validity of any devise, bequest, or limitation in dispute, or alimony.

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**Minors may sue for wages.**

**30** An infant may sue for any sum, within the jurisdiction of the court, due to him for wages, or for work or services, as if he were of full age.

R.S.M., c. 50, s. 30.

Note: Next Friend Bringing Action for Infant - See Rules.

Note: See sec. 111 of The Child Welfare Act.

## COUNTY COURTS

### Disposing of claims by infants.

**31(1)** In an action or proceeding in the court in which money or damages is or are claimed by or on behalf of an infant, suing alone or in conjunction with other parties, the court has the like jurisdiction to deal with, and finally dispose of, the infant's claim as the Court of Queen's Bench would have if the action or proceeding were in that court.

Am.

Note: Supreme Court of Judicative Act 1925, (Imp.) c. 49, order 22, R. 15.

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### Powers respecting executors and administrators.

**32(1)** Subject to the jurisdiction of the court as to amount, an executor or administrator may

- (a) subject to subsection (2), sue or be sued in a County Court in like manner as in the Court of Queen's Bench; or
- (b) be sued for the amount or part of the amount of a distributive share duly ascertained by the proper court in an intestacy or of a legacy under a will.

Am.

### Judgment and execution.

**32(2)** In a case to which clause (a) of subsection (1) applies, judgment and execution shall be such as, in the like case, would be given or granted in the Court of Queen's Bench.

Am. R.S.M., c. 50, s. 32; am.

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### Plaintiff's right of transfer to Q.B.

**42(1)** Where the defendant disputes jurisdiction on any ground other than lack of territorial jurisdiction, the plaintiff may, on praecipe, require all papers in the action to be transmitted to the proper office of the Court of Queen's Bench in the judicial district in which the action was brought and the clerk shall forthwith transmit the papers to that office; and when the papers and proceedings are received and entered therein, the action shall become an action in the Court of Queen's Bench.

### Court ordering transfer.

**42(2)** Where the plaintiff does not exercise the right to have the papers and proceedings so transmitted, the defendant may, after the expiration of ten days from filing his defence, apply to the court for an order transferring the action to the Court of Queen's Bench; and the court may direct the action to be so transferred, on such terms as to costs or otherwise as it deems just.

R.S.M., c. 50, s. 42.

### Jurisdiction in counter-claim disputed.

**43(1)** Where the defendant pleads a set-off or counter-claim, either party may apply to the court for an order transferring the action to the Court of Queen's Bench on the ground that the set-off or counter-claim involves a matter beyond the jurisdiction of the court.



## COUNTY COURTS

### **Order of transfer.**

**43(2)** The court, if satisfied that the set-off or counter-claim involves matter which is beyond its jurisdiction, may order the transfer, upon such terms as to costs or otherwise as it deems just.

### **Jurisdiction valid if not disputed.**

**43(3)** If no such application is made within the time limited or if an application, so made, is refused, the jurisdiction of the court to hear and determine the whole matter involved in the set-off or counter-claim shall be deemed to be established.

R.S.M., c. 50, s. 43; S.M. 1976, c. 14, s. 9.

### **Application to transfer action.**

**43.1** Where an action in a court was brought under clause 27 (1) (j), any party to the action may, at any time before the action is set down for trial, apply to the court to have the action transferred to the Court of Queen's Bench; and, unless all parties thereto making claims that are in excess of \$10,000.00, or that may result in judgments for more than \$10,000.00, abandon under section 33 by amending the pleadings any amount of their claim that is or may be in excess of \$10,000.00, the court shall order the action to be transferred to the Court of Queen's Bench.

S.M. 1976, c. 14, s. 10.

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### **Transfer of action to Provincial Judges Court.**

**46.1 (1)** Where an action brought in a court could have been brought in a Provincial Judges Court (Family Division), any party to the action may, with the consent of all other parties to the action, apply to a judge of the court at any time before the action has been set down for trial to have the action transferred to a Provincial Judges Court (Family Division), and the judge shall order the action to be transferred to the appropriate Provincial Judges Court (Family Division).

.....

### **Transfer of action to County Court.**

**46.2 (1)** Where an action brought in a Provincial Judges Court (Family Division) could have been brought in a County Court, any party to the action may apply to a judge of the County Court at any time before the date for hearing is fixed to have the action transferred to the County Court, and the judge may order the action to be so transferred and thereupon the action and all pleadings and documents filed in connection therewith in the Provincial Judges Court (Family Division) shall be transferred to the County Court.

.....

### **Transfer of action to Queen's Bench.**

**46.3 (1)** Where an action in a County Court could have been brought in the Court of Queen's Bench, any party to the action may, with the consent of all other parties to the action, apply to a judge of the County Court at any time before the action has been set down for trial to have the action referred to the Court of Queen's Bench, and the judge shall refer the action and transfer all pleadings and documents filed in the action in the County Court to the Court



COUNTY COURTS

of Queen's Bench, and the Court of Queen's Bench shall receive the action, including any counterclaim, and all pleadings and documents filed in connection therewith, and those pleadings and documents shall be deemed to be pleadings and documents filed in the Court of Queen's Bench.

S.M. 1978, c. 49, s. 25(2) .

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APPEALS

**Appeal as to costs.**

**68** No judgment of the court, by the consent of parties, or as to costs only, which by law are left to the discretion of the court, is subject to an appeal, except by leave of the court giving the judgment.

R.S.M., c. 50, s. 68; am.

**Provision for appeal generally.**

**69** Save as provided in section 68, and save in an action or proceeding where an Act applicable thereto otherwise provides, a person directly affected by a judgment of the court may appeal therefrom to The Court of Appeal.

R.S.M., c. 50, s. 69.

Note: Practice on Appeal - See Rules under The Court of Appeal Act.

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**Judgments of retired judges etc.**

**73** A judge who

- (a) resigns his office; or
- (b) is appointed as a judge of the Court of Queen's Bench, the Court of Appeal, a federal court or any other court; or
- (c) is compulsorily retired by reason of section 26 of The Judges Act (Canada);

shall remain seized of any cause, action, or matter in respect of which he has heard evidence or argument for a period of twelve weeks after his resignation, appointment or retirement, and may, within twelve weeks after his resignation, appointment, or retirement, continue to hear any further evidence or argument necessary to complete the proceedings in the cause, action or matter and give judgment thereon as if he had not so resigned, been appointed or been retired.

S.M. 1971, c. 18, s. 1.

**Re-hearing where judge vacates office or dies without giving judgment.**

**74(1)** Where the judge before whom an action is tried resigns or otherwise vacates his office and does not give his judgment within twelve weeks thereafter, or where the judge dies before giving judgment, either party may thereupon set the action down to be re-heard by the court.

S.M. 1971, c. 18, s. 2.

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COUNTY COURTS

**Notice to be given to Attorneys-General of Canada and of Manitoba.**

77 (1) Where in any action or other proceeding, the constitutional validity of any Act, or any provision in any Act, of the Parliament of Canada or of the Legislature, is brought in question, it shall not be adjudged to be invalid until after notice has been given to the Attorney-General of Canada, and the Attorney-General of Manitoba.

**Form of notice.**

77 (2) The notice shall be entitled in the cause, shall state what Act or part of an Act is in question, and the day on which the question is to be argued, and shall give such other particulars as are necessary to show the constitutional point proposed to be argued.

**Six days' notice necessary.**

77 (3) Subject to the rules, the notice shall be served six days before the day named for the argument and may be served upon any person employed in the office of the Attorney-General.

**Right of Attorneys-General to be heard.**

77 (4) The Attorney-General of Canada and the Attorney-General of Manitoba are entitled, as of right, to be heard, either in person or by counsel, notwithstanding that the Crown is not a party to the action or proceeding.

S.M. 1971, c. 7, s. 1.

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PART II

**Claim not to exceed \$1,000.00**

80 (1) Notwithstanding any other provision of this Act where in any claim, counterclaim or matter that is within the jurisdiction of the County Court the amount involved does not exceed \$1,000.00, the claim, counterclaim or matter may be dealt with in the manner hereinafter provided.

S.M. 1971, c. 77, s. 5; S.M. 1972, c. 38, s. 2;  
S.M. 1977, c. 20, s. 4.

.....

**Filing of objection and defence.**

83 (1) Upon the service of a statement upon him, the person from whom relief is sought shall, if he does not agree to have the matter disposed of summarily, file a notice of objection and statement of defence with the deputy county court clerk or the county court clerk within 16 days from the date of service or within such further time as a county court judge may by order allow; and where the person from whom relief is sought fails to file a notice of objection and statement of defence as required, he shall be deemed to have consented to the summary disposition of the matter under this Part.

S.M. 1971, c. 77, s. 5; S.M. 1972, c. 38, s. 5;  
S.M. 1979, c. 35, s. 3.

.....

COUNTY COURTS

Designation of deputy clerks and clerks.

84 (1) For the purposes of carrying out the provisions of this Part the minister may

- (a) designate one or more persons as deputy County Court clerks or County Court clerks; and
- (b) recommend the remuneration to be paid to them;

and, only those persons so designated and County Court judges, have jurisdiction with respect to any claim, counterclaim or matter under this Part.

S.M. 1971, c. 77, s.5; S.M. 1972, c. 38, s. 6;  
S.M. 1977, c. 20, s. 5.

.....

Hearing.

85 (1) Where a notice of objection and statement of defence as required under subsection (1) of section 83 has not been filed and the matter is set down for hearing the matter including any counterclaim or set-off shall be heard and determined in a summary manner by a deputy County Court clerk, County Court clerk or County Court judge.

S.M. 1971, c. 77, s. 5; S.M. 1972, c. 38, s. 7;  
S.M. 1979, c. 35, s. 5.

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Decision a judgment of County Court.

86 (1) The decision of a deputy County Court clerk or County Court clerk under subsection (1) of section 85 when filed in the County Court office is a judgment of that court; but any party aggrieved by the decision may, within 30 days of the making of the decision or within such further time as the County Court judge may by order allow, appeal therefrom to a judge of the County Court.

Appeal, a hearing de novo.

86 (2) An appeal under subsection (1) is a hearing de novo; and shall be launched by filing a simple notice of appeal and subject to subsection (3) the action shall thereafter be conducted in accordance with the rules of the County Court except that no transcript of the evidence is required to be filed.

Decision final except on question of law.

86 (3) Subject to subsection (6),

- (a) a decision of a County Court judge under subsection (1) of section 85; or
- (b) a decision of a County Court judge under subsection (2);

is final and may be enforced as a judgment of that court.

.....



## COUNTY COURTS

### **Appeal to Court of Appeal.**

86 (6) Notwithstanding subsection (3), a decision of a County Court judge under subsection (1) of section 85 or subsection (2) of this section may be appealed to the Court of Appeal on a question of law only.

S.M. 1971, c. 77, s. 5; S.M. 1972, c. 38, s. 8;  
S.M. 1974, c. 16, s. 8; S.M. 1977, c. 20, s. 7.

### **Separation of certain claims.**

86.1 Where a claim for damage to a motor vehicle arising out of a traffic accident is proceeded with under this Part and no claim is made in the same proceeding in respect of

- (a) damage to other property arising out of the traffic accident; or
- (b) personal injury of any person injured in the traffic accident; or
- (c) the death of any person arising out of the traffic accident;

a decision under this Part in respect of the damage to the motor vehicle does not bind or affect the court or any other court in respect of liability for or the amount of

- (d) damage to other property arising out of the traffic accident; or
- (e) damages for personal injury of any person injured in the traffic accident; or
- (f) loss or damage attributable to the death of any person arising out of the traffic accident.

S.M. 1977, c. 20, s. 9.

.....

### **Claims under other Acts.**

93 Notwithstanding anything contained in any other Act of the Legislature, where a claim under any other Act of the Legislature is for money in an amount not exceeding \$1,000.00, the claim may be enforced in accordance with the provisions of this Part.

S.M. 1971, c. 77, s. 5; S.M. 1977, c. 20, s. 11.

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## COUNTY COURT JUDGES' CRIMINAL COURTS ACT

R.S.M. 1970, c. C250

Amended by 1974, c. 59, s. 18

Note:

This statute establishes, in principle, the Criminal Court of County Court Judges. In reality, however, according to information received from a high official of the County Court, a court under such name does not exist. In fact, this statute provides that judges of the County Court have powers to try any person charged with a criminal offence who consents to be tried speedily and without a jury. In such case the record is filed with the Court of Queen's Bench, even if the proceedings were presided over by a judge of a County Court. Moreover, the Criminal Court established under this statute can be presided over by a judge of the Court of Queen's Bench as well as a judge of the County Court.

COUNTY COURT JUDGES' CRIMINAL COURTS ACT

R.S.M. 1970, c. C250

Modifié par 1974, c. 59, art. 18

Note:

En principe, cette loi établit la Cour criminelle des juges des cours de comté. Mais en réalité, suivant les renseignements obtenus d'un officier supérieur de cette cour, il n'existe pas de tribunal comme tel portant ce nom. Effectivement, la présente loi confère aux juges des cours de comté le pouvoir d'entendre la cause de tout prévenu accusé d'un acte criminel qui choisit d'être jugé de façon expéditive par un juge sans jury. Le dossier d'une telle cause est alors déposé et traité à la Cour du Banc de la Reine même si c'est un juge d'une cour de comté qui préside le procès. D'ailleurs, la cour criminelle constituée par la présente loi peut être présidée tant par un juge de la Cour du Banc de la Reine que par un juge d'une cour de comté.



## **AN ACT RESPECTING COUNTY COURT JUDGES' CRIMINAL COURTS.**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### **Short title.**

- 1** This Act may be cited as: "The County Court Judges' Criminal Courts Act".  
R.S.M., c. 49, s. 1.

### **COURTS AND JUDGES**

### **Establishment of courts and jurisdiction and powers.**

- 2** In each judicial district there shall be a court, to be known as: "County Court Judges' Criminal Court, for (giving name of judicial district)", each of which courts is hereby constituted and continued as a court of record, for the trial, without a jury, of any person committed to gaol on a charge of being guilty of any offence for which that person may be tried under the Act of the Parliament of Canada known as the Criminal Code, or of any Act or Acts heretofore or hereafter passed amending, or in substitution for, that Act, and for which offence the person so committed consents to be tried speedily and without a jury; and the courts so constituted have, and shall be deemed to have had on and from the twenty-third day of July in the year one thousand eight hundred and eighty-three, the powers and duties that the above in part recited Acts or any of them, or any other Act of the Parliament of Canada passed in reference to such courts and trials, purports or purported to give, so far as the Legislature of the Province of Manitoba can give them.

R.S.M., c. 49, s. 2; am.

Note: See Part XVI of the Criminal Code as to Speedy Trials.

### **Judges who may preside.**

- 3** Any such court may be presided over by
- (a) a judge of a County Court within the judicial district for which he is appointed;
  - (b) a judge of a County Court within a judicial district within which he has been requested by the Chief County Court Judge under section 9 of The County Courts Act to hold court and perform any other duty of a County Court Judge; or
  - (c) the Chief County Court Judge for Manitoba; or
  - (d) a judge of the Court of Queen's Bench.

if and as long as under the Acts of the Parliament of Canada to which reference is made in section 2 it remains lawful for any such judge so to do.

R.S.M., c. 49, s. 3; R. & S., S.M., 1965, c. 16, s. 1; S.M. 1974, c. 59, s. 18.



## SURROGATE COURTS ACT

R.S.M. 1970, c. C290

Amended by 1970, c. 96, ss. 13 and 14;  
1971, c. 82, s. 14; 1974, c. 9; 1975, c. 42,  
s. 17; 1976, c. 15; 1977, c. 57, s. 9; 1978,  
c. 49, s. 28; 1979, c. 28, s. 4; 1980, c. 58,  
s. 13

Note:

This statute grants to the Surrogate Court all jurisdiction and authority in testamentary matters, without, however, depriving the Court of Queen's Bench of any jurisdiction in such matters, which it had before the establishment of this court. Moreover, a contentious cause or proceeding in a Surrogate Court can be removed into the Court of Queen's Bench, as well as a cause or proceeding begun in the Court of Queen's Bench can be removed into a Surrogate Court. Decisions of this court can be appealed to the Court of Appeal. The Surrogate Court consists of the Chief County Court Judge and other judges of the County Court, all appointed by the federal government.

The Surrogate Courts Act contains over 80 sections, and only provisions of constitutional law interest are reproduced below.



SURROGATE COURTS ACT

R.S.M. 1970, c. C290

Modifié par 1970, c. 96, art. 13-14; 1971, c. 82, art. 14; 1974, c. 9; 1975, c. 42, art. 17; 1976, c. 15; 1977, c. 57, art. 9; 1978, c. 49, art. 28; 1979, c. 28, art. 4; 1980, c. 58, art. 13

Note:

Cette loi confère au tribunal des successions ("Surrogate Court") toute compétence en matière testamentaire sans toutefois déposséder la Cour du Banc de la Reine de la juridiction qu'elle détenait en ce domaine avant l'institution du présent tribunal. D'ailleurs, une procédure contentieuse instruite devant ce tribunal peut être référée à la Cour du Banc de la Reine. De même, une cause inscrite devant la Cour du Banc de la Reine peut être renvoyée devant le tribunal des successions. Les décisions de ce tribunal peuvent faire l'objet d'un appel à la Cour d'appel. Le tribunal des successions se compose du juge en chef et des autres juges des cours de comté, tous nommés par l'état fédéral.

Le Surrogate Courts Act contient plus de 80 articles. Seules les dispositions d'intérêt en droit constitutionnel sont reproduites ci-après.

**AN ACT RESPECTING SURROGATE COURTS AND THE GRANTING OF PROBATE OF WILLS AND LETTERS OF ADMINISTRATION.**

**Short title.**

**1** This Act may be cited as: "The Surrogate Courts Act".  
R.S.M., c. 53, s. 1.  
History: S.M., 1881, c. 28, secs. 92-119; R.S.M., 1891, c. 37; R.S.M., 1902, c. 41; R.S.M., 1913, c. 471; C.A., 1924, c. 47; S.M., 1934, c. 6; R.S.M., 1940, c. 45; R.S.M., 1954, c. 53 as amended.

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ORGANIZATION OF COURTS  
SURROGATE COURTS

**Establishment of Surrogate Court.**

**3(1)** There shall be in and for every judicial district a court of record to be styled "The Surrogate Court of " (naming the judicial district), and also one to be styled: "The Surrogate Court of St. Boniface", which shall have jurisdiction in the area within the County Court District of St. Boniface which area, for surrogate purposes, is not included in The Surrogate Court of the Eastern Judicial District; but the Lieutenant Governor in Council may alter the boundaries of The Surrogate Court of St. Boniface.  
R. & S., S.M. 1968, c. 14, s. 2; am.

**Continuity of jurisdiction where court seized thereof.**

**3(2)** Where, before the passing of this Act or an order in council altering a district, proceedings in an estate had been taken in a Surrogate Court which, had this Act or the order been passed, should have been taken in another Surrogate Court, the court exercising jurisdiction shall continue to have jurisdiction over the proceedings and shall retain possession and control of the papers and documents relating thereto.  
R.S.M., c. 53, s. 3; am.

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JUDGES

**Surrogate court judges.**

**6 (1)** Except as in this section otherwise provided, the county court judge in each judicial district shall be a judge of all Surrogate Courts for the district, and the chief county court judge for the province shall be a judge of all Surrogate Courts in the province.  
S.M. 1963, c. 17, s. 2; S.M. 1974, c. 9, s. 1.

**Designating judges.**

**6(2)** Where there are two or more County Court judges in a judicial district in which there are two or more surrogate courts, the Lieutenant Governor in Council may designate the surrogate court of which each of the County Court judges shall be judge.  
En. S.M., 1963, c. 17, s. 3.

SURROGATE COURTS

Judge in St. Boniface.

6 (3) The County Court judge for the County Court of St. Boniface shall be the judge of the Surrogate Court of St. Boniface.

En. S.M., 1963, c. 17, s. 3; am. S.M., 1969, (2nd Sess.), c. 34, s. 3; R.S.M., c. 53, s. 6; am.  
Note: Power to Appoint Surrogate Judges - See Rimmer v. Hannon (1921) 3 W.W.R. 1; Sask. Surrogate Courts, 6 Can. Bar Rev. pp. 339, 441, 530, 679.  
Mandamus to Surrogate Court Judge - Rex v. Surrogate Court Judge, 38 M.R. 446.

S.M. 1974, c. 9, s. 2.  
.....

Oath of office.

9. Every judge before entering upon the duties of his office shall take and subscribe the following oath before the Lieutenant Governor, the Chief Justice of Manitoba, any judge of the Court of Appeal, the Chief Justice of the Queen's Bench, any judge of the Queen's Bench, a judge of a Surrogate Court in the province or some person appointed by the Lieutenant Governor in Council to administer it, that is to say:

I, \_\_\_\_\_ do swear that I will truly and faithfully, according to the best of my skill and knowledge, execute the duties, powers, and trusts, of a Surrogate Court judge of the Province of Manitoba. So help me God.

R.S.M., c. 53, s. 9; S.M. 1977, c. 57, s. 9; S.M. 1978, c.28, s. 4.

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JURISDICTION

Jurisdiction of court.

19(1) All jurisdiction and authority in relation to matters and causes testamentary is hereby vested in the several Surrogate Courts.

Am.  
Note: Guardianship of Children - See Part VIII of The Child Welfare Act.  
Jurisdiction in Passing of Accounts - See secs. 57 to 61, and sec. 80 of The Trustee Act.  
Remuneration of Executors and Administrators - See sec. 84 of The Trustee Act.  
Jurisdiction over Estates of Persons of Unsound Mind - See The Mental Health Act.  
Jurisdiction to make orders respecting Succession Duties - See The Succession Duty Act.

Jurisdiction of Queen's Bench preserved.

19(2) This section does not deprive the Court of Queen's Bench of any jurisdiction in such matters which it had at the coming into force of this Act.

Am. R.S.M., c. 53, s. 18; am.  
Note: Jurisdiction of Queen's Bench in surrogate matters - See sec. 50 et seq. of The Queen's Bench Act.

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SURROGATE COURTS

Removal of proceedings to Q. B.

27(1) Where a contentious cause or proceeding in a Surrogate Court is of such a nature as to render the removal expedient, a judge of that court, or of the Court of Queen's Bench, may order it to be removed into the Court of Queen's Bench.

R. & S., S.M., 1968, c. 14, s. 9.

Removal of proceedings from Q. B. to Surrogate Court.

27(2) Where a cause or proceeding within the jurisdiction of the Surrogate Court is begun in the Court of Queen's Bench, a judge of the Court of Queen's Bench may order it to be removed into a Surrogate Court.

En. S.M., 1956, c. 10, s. 1; R. & S., S.M., 1968, c. 14, s. 9.

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Continuation of matters before retired judges etc.

- 28 A judge who
- (a) resigns his office; or
  - (b) is appointed as a judge of any other court; or
  - (c) is compulsorily retired by reason of section 24 of The Judges Act (Canada);

may be seized of any cause, action, or matter in respect of which he has heard evidence or argument for a period of 12 weeks after his resignation, appointment or retirement, and may, within those 12 weeks continue to hear any further evidence or argument necessary to complete the proceedings in the cause, action or matter and give judgment thereon as if he had not so resigned, been appointed or been retired.

En. S.M., 1962, c. 11, s. 2.; S.M. 1978, c. 49, s. 28.

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APPEALS

Right of appeal.

64 Any party may, unless otherwise provided by this Act, appeal to The Court of Appeal from an order, determination, or judgment, of a Surrogate Court in any cause or matter, including an order, decision, or determination, of the court on the taking of accounts, or upon an adjudication as to a claim or demand, or as to the title to property.

R.S.M., c. 53, s. 61.  
Note: Practice on Appeal - See Rules of The Court of Appeal issued in 1962.

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## PROVINCIAL JUDGES ACT

S.M. 1972, c. 61; C.C.S.M. 1970, c. P148

Amended by 1976, c. 69, s. 37; 1977, c. 5  
and c. 6, s. 12; 1977 (2nd), c. 4, s. 5; 1978,  
c. 3, c. 26, and c. 49, s. 79; 1979, c. 6; 1980,  
c. 55, s. 14, and c. 58, ss. 14 to 23

### Note:

This statute provides for the appointment by the Lieutenant Governor in Council of provincial judges, magistrates and justices of the peace, establishes a Judicial Council to deal with complaints against provincial judges, and creates the Provincial Judges Court. This court of record of first instance is composed of a Criminal Division and a Family Division under the supervision of a Chief Judge. An action or proceeding in a Provincial Judges Court (Family Division) can be referred, with the consent of all parties, to a County Court or the Court of Queen's Bench, as the case may be. Likewise, an action in a County Court can be referred to the Provincial Judges Court (Family Division). While this statute does not provide for appeals, decisions of the Provincial Judges Court can be appealed in pursuance of federal and provincial statutes. For instance, under the Child Welfare Act (S.M. 1974, c. 30, and subs.), decisions of the Provincial Judges Court (Family Division) can be appealed to the Court of Appeal of Manitoba. Under section 747(c) of the Criminal Code (R.S.C. 1970, c. C-34), summary convictions of the Provincial Judges Court (Criminal Division) can be appealed to the County Court. Finally, any party to an action may apply to the Court of Queen's Bench to determine the jurisdiction of the Provincial Judges Court.

The Provincial Judges Act contains some 30 sections, and only provisions of constitutional law interest are reproduced below.



## PROVINCIAL JUDGES ACT

S.M. 1972, c. 61; C.C.S.M. 1970, c. P148

Modifié par 1976, c. 69, art. 37; 1977, c. 5 et c. 61, art. 12; 1977(2nd), c. 4, art. 5; 1978, c. 3, c. 26 et c. 49, art. 79; 1979, c. 6; 1980, c. 55, art. 14 et c. 58, art. 14-23

### Note:

Cette loi prévoit la nomination de juges provinciaux, de magistrats et de juges de paix par le lieutenant-gouverneur en conseil, établit un conseil de la magistrature chargé d'entendre les plaintes portées contre les juges provinciaux et institue la Cour des juges provinciaux ("Provincial Judges Court"). Ce tribunal d'archives de première instance comprend une division criminelle et une division de la famille sous la supervision d'un juge en chef. Certaines causes inscrites devant la division de la famille de cette cour peuvent être renvoyées, du consentement de toutes les parties à l'action, devant une cour de comté ou devant la Cour du Banc de la Reine, selon le cas. De même, une cause instruite devant une cour de comté peut être référée à la division de la famille de la Cour des juges provinciaux. Même si la présente loi ne prévoit aucun droit d'appel des décisions de la Cour des juges provinciaux, ce droit existe en vertu de lois fédérales ou provinciales. Ainsi, en vertu du Child Welfare Act (S.M. 1974, c. 30 et ses modifications), il y a appel à la Cour d'appel du Manitoba des décisions rendues par la division de la famille de la Cour des juges provinciaux. Sous l'autorité de l'art. 747(c) du Code criminel, il y a appel à la Cour de comté des décisions rendues par la division criminelle de la Cour des juges provinciaux en matière de déclarations sommaires de culpabilité. Enfin, toute partie intéressée peut s'adresser à la Cour du Banc de la Reine pour attaquer la compétence de la Cour des juges provinciaux dans une instance donnée.

Le Provincial Judges Act contient une trentaine d'articles. Seules sont reproduites les dispositions présentant un intérêt en droit constitutionnel.

## THE PROVINCIAL JUDGES ACT.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### Definitions.

1 In this Act

- (a) "chief judge" means the judge appointed as chief judge under this Act;
- (b) "judge" means a provincial judge appointed under this Act;
- (c) "Judicial Council" means the Judicial Council established under this Act;
- (d) "minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (e) "provincial judges court" means a court presided over by a provincial judge;
- (f) "senior judge" means a judge appointed as a senior judge under this Act.

S.M. 1972, c. 61, s. 1.

## PART I

### PROVINCIAL JUDGES

#### Appointment of provincial judges.

2 (1) Subject to the provisions of this Act, the Lieutenant Governor in Council may appoint such persons as he considers necessary as provincial judges and fix such salary, fees or other remuneration that shall be paid to them.

#### Qualifications of judges.

2 (2) No person shall be appointed a provincial judge unless

- (a) he is a member in good standing of the Law Society of Manitoba;
- (b) he is entitled to practise as a barrister and solicitor in Manitoba; and
- (c) he has practised as a barrister or solicitor in Manitoba for not less than 5 years or has other equivalent experience.

#### Holding of office during good behaviour.

2 (3) Except as otherwise provided in this Act, every person who is appointed as a full time judge under this Act shall

- (a) hold office during good behaviour; and
- (b) while he serves as a judge, reside in the Province of Manitoba.

S.M. 1972, c. 61, s. 2; S.M. 1977, c. 3, s. 1; S.M. 1980, c. 58, s. 14.

#### Oaths of office and allegiance.

3 (1) Every judge shall take and subscribe the following oath before the chief judge or a judge designated by him:

I, \_\_\_\_\_ of \_\_\_\_\_ in the Province of Manitoba do solemnly swear that I will duly, faithfully and to the best of my knowledge and ability perform and fulfill the duties and require-

## PROVINCIAL JUDGES

ments of the office of JUDGE OF THE PROVINCIAL JUDGES COURT to which I have been appointed, and so long as I shall continue to hold office, without fear or favour.

SO HELP ME GOD:

and also the oath of allegiance as required by The Civil Service Act.

### Oaths to be forwarded to Executive Council.

3 (2) The oath of office and oath of allegiance shall be transmitted forthwith to the chief judge who shall send the oaths to the Clerk of the Executive Council together with such copies thereof as may be directed by the minister

S.M. 1972, c. 61, s. 3.

### Retirement.

4 Every judge appointed as a full-time judge shall retire upon attaining the age of sixty-five years subject to such extensions as may be granted from time to time by the Lieutenant Governor in Council.

S.M. 1972, c. 61, s. 4.

### Resignation.

5 A judge may at any time resign his office in writing, signed by him and delivered to the minister.

S.M. 1972, c. 61, s. 5.

### Continuation of matters before retiring judges etc.

5.1 A judge who

(a) retires; or

(b) resigns;

remains seized of any cause, action, or matter in respect of which he has heard evidence or argument for a period of 12 weeks after his retirement or resignation and may, within those 12 weeks continue to hear any further evidence or argument necessary to complete the proceedings in the cause, action or matter and give judgement thereon as if he had not retired or resigned.

S.M. 1978; c. 3, s. 1.

### Composition of Judicial Council.

6 (1) There shall be a Judicial Council which shall be composed of

(a) the Chief Justice of the Queen's Bench or another judge of that court nominated by the Chief Justice, who shall be chairman;

(b) the president of the Law Society of Manitoba or a member of the Law Society of Manitoba nominated by the president thereof;

(c) the president of the Manitoba branch of the Canadian Bar Association or a member of the Manitoba branch of the Canadian Bar Association nominated by the president thereof; and



## PROVINCIAL JUDGES

- (d) two other persons appointed by the Lieutenant Governor in Council who shall hold office for such term as may be specified by the Lieutenant Governor in Council and thereafter until their successors are appointed.

### Chairman.

6 (2) Repealed 1978, c. 3, s. 2.

### Acting chairman.

6 (3) Where, for any reason, the chairman of the Judicial Council is unable to act, the other members shall choose a member to act in his absence as chairman, and when the other members are unable to agree on a member to act as chairman, the Chief Justice of the Queen's Bench shall name a member to act in the absence of the chairman as chairman.

### Procedure.

6 (4) Subject to this Act, the Judicial Council may determine its own procedures and conduct inquiries in such manner as it considers appropriate.

S.M. 1972, c. 61, s. 6; S.M. 1977, c. 5, s. 2;

S.M. 1978, c. 3, s. 2; S.M. 1978, c. 49, s. 79.

### Function of Judicial Council.

7 (1) The function of the Judicial Council is to receive and deal with complaints respecting conduct unbecoming a judge or neglect of duty by a judge or respecting the inability or incapacity of a judge to perform his duties.

### Complaints to Chief Justice of Q.B.

7 (2) A complaint respecting the conduct of a judge, or the neglect of duty by a judge, or the ability or capacity of a judge to perform his duties, shall be made to the Chief Justice of the Queen's Bench in writing in such form and in such manner as the Judicial Council may require.

### Withdrawal of complaint.

7 (2.1) A person who has made a complaint under subsection (2) may, with the consent of the Judicial Council, withdraw the complaint.

### Frivolous or vexatious complaints.

7 (3) Where the Judicial Council receives a complaint that a majority of the members thereof consider to be frivolous or vexatious, it shall dismiss the complaint and advise the complainant accordingly.

## PROVINCIAL JUDGES

### Reference to chief judge, etc.

7 (4) Where the Judicial Council receives a complaint that it does not dismiss under subsection (3), it may refer the complaint to the chief judge or to such other person as the Judicial Council deems fit for an investigation and report.

### Suspension by chief judge.

7 (4.1) Where a complaint in respect of a judge has been referred under subsection (4) for an investigation and report, or the Judicial Council has decided to hold an inquiry in respect of a judge, the chief judge may suspend the judge pending the result of the investigation or inquiry, as the case may be.

### Inquiry at request of minister.

7 (4.2) Where the Judicial Council receives a request from the minister to hold an inquiry into the conduct, ability or capacity of, or neglect of duty by a judge, it shall hold the inquiry.

### Inquiry following investigation.

7 (4.3) Where the judicial council receives a report on a complaint referred under subsection (4) for an investigation and report, it shall, upon receiving the report, consider the report and

- (a) if upon consideration of the report, a majority of the members of the council consider the complaint to be frivolous, vexatious or unfounded, or to have been resolved in a manner satisfactory to the council, it may dismiss the complaint and advise the complainant accordingly; or
- (b) the Judicial Council may decide to proceed to hold an inquiry in respect of the complaint.

### Inquiry by Judicial Council.

7 (5) Where the Judicial Council proceeds to hold an inquiry into a complaint or upon the request of the minister, it shall give, or cause to be given, to the judge in respect of whom the inquiry is to be made at least 15 days notice in writing stating

- (a) particulars of the complaint or the request of the minister, as the case may be; and
  - (b) the date, time and place of the inquiry;
- and the inquiry shall be held in public unless the Judicial Council determines, in the public interest, that all or part of the inquiry should be held in camera.

### Counsel appointed by minister.

7 (5.1) Where the minister requests that an inquiry be conducted, he may appoint legal counsel to act on his behalf and to appear and present evidence at the inquiry.

### Counsel appointed by council.

7 (5.2) The Judicial Council may appoint legal counsel to appear at an inquiry and present evidence relating to a complaint.

## PROVINCIAL JUDGES

### **Right of judge to be present, etc.**

**7 (5.3)** A judge in respect of whom the Judicial Council is holding an inquiry may be present and represented by counsel at the inquiry and may adduce evidence and cross-examine witnesses.

### **Powers and protection under Evidence Act.**

**7 (6)** The Judicial Council has all the powers of a Commissioner appointed under Part V of The Manitoba Evidence Act as set out in sections 90 to 96 of that Act, and each member of the Judicial Council has the protection that a commissioner appointed under Part V of that Act has under section 89 of that Act.

### **Examination of records, etc.**

**7 (6.1)** For the purposes of an inquiry under this section, the Judicial Council, or a person authorized for the purpose by the Judicial Council, may examine and extract relevant information from any records or writings in the possession of a judge in respect of whom the inquiry is being made and may make such copies thereof as the Judicial Council considers necessary.

### **Quorum.**

**7 (7)** Three members of the Judicial Council constitute a quorum thereof, and a decision of the majority of the quorum is a decision of the Judicial Council.

### **Remuneration.**

**7 (8)** The members of the Judicial Council, except the chairman, may be paid such remuneration and out-of-pocket expenses as may be approved by the minister.

### **Prohibition of publication of information.**

**7 (8.1)** The Judicial Council may prohibit the publication of information or documents placed before it that relate to an inquiry or investigation under this Act where it is of the opinion that the publication is not in the public interest.

### **Disposition of complaint.**

**7 (9)** The Judicial Council after holding an inquiry may

- (a) dismiss the complaint; or
- (b) suspend the judge; or
- (c) reprimand the judge;

and may make such order as to costs as it may deem advisable and shall forward a record of the proceedings of the inquiry to the chief judge and to the minister, and the decision or order so made shall be in writing and shall be served personally upon the judge affected thereby.

### **Salary while suspended.**

**7 (9.1)** Where a judge is suspended under subsection (4.1), the Judicial Council may order that pending the determination of the inquiry, the judge not receive any salary.



## PROVINCIAL JUDGES

### Remittance of salary.

7 (9.2) Where the Judicial Council has made an order under subsection (9.1), it may, following the determination of the inquiry, order that all or any part of the salary not paid to the judge in accordance with the order made under subsection (9.1) be remitted to the judge.

### Making order public.

7 (10) When an appeal against an order or decision of the Judicial Council under subsection (11) is dismissed or the time for appeal therefrom has expired the Judicial Council

- (a) shall provide the complainant with a copy of the order or decision; and
- (b) may make the order or decision public.

### Appeal.

7 (11) A judge who is affected by an order or decision of the Judicial Council may within thirty days from the date of service of the order or decision, appeal the order or decision as the case may be, to the Court of Appeal upon any issue of fact or law or mixed fact and law.

### Decision of Court of Appeal final.

7 (12) The decision of the Court of Appeal on an appeal under subsection (11) is final.

### Removal of judge from office.

7 (13) Where the Judicial Council after an inquiry suspends a judge from office and

- (a) an appeal from the suspension by the judge is dismissed; or
- (b) the time for filing appeal has expired;

the Lieutenant Governor in Council may remove the judge from office and revoke his appointment.

S.M. 1972, c. 61, s. 7; S.M. 1976, c. 69, s. 37;  
S.M. 1977, c. 5, ss. 3-6; S.M. 1980, c. 58, ss.  
15-18.

### Jurisdiction.

8 Every judge has jurisdiction throughout Manitoba and,

- (a) shall exercise all the powers and perform all the duties conferred or imposed upon a judge by or under any Act of the Legislature or of the Parliament of Canada;
- (b) has all the power and authority now vested by or under any Act of the Legislature in a magistrate, two justices of the peace sitting together or a juvenile and family court or a judge thereof;

## PROVINCIAL JUDGES

- (c) may exercise all the powers and perform all the duties conferred or imposed upon a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada;
  - (d) may exercise the jurisdiction conferred upon a magistrate by Part XVI of the Criminal Code (Canada);
  - (e) is *ex officio* a justice of the peace and commissioner for oaths.
- S.M. 1972, c. 61, s. 8.

### Chief judge.

9 (1) The Lieutenant Governor in Council may appoint a judge as chief judge of the Provincial Judges Courts, (Family and Criminal Divisions).

### Duties of chief judge.

9 (2) The chief judge has general supervisory powers, in respect of judges, magistrates and justices of the peace and assigning judges, magistrates and justices of the peace for hearings as circumstances require, and he shall perform such administrative duties as the minister may prescribe.

### Full time judge's residence.

9 (3) The chief judge may designate the area of the province in which a judge appointed on a full time basis shall establish residence or become ordinarily resident.

### Appeal respecting residence.

9 (4) Where the chief judge designates an area of the province in which a judge appointed on a full time basis shall establish residence or become ordinarily resident, the judge may, within 21 days after being informed of the designation, apply in writing to the Judicial Council to review the designation and the Judicial Council shall hold a hearing on the application and may confirm, vary or set aside the designation.

### Onus on application.

9 (5) On an application under subsection (4), the onus is on the chief judge to establish to the satisfaction of the Judicial Council the need for the judge to whom the designation relates to establish residence or become ordinarily resident in the area designated.

S.M. 1972, c. 61, s. 9; S.M. 1980, c. 58, s. 19.

### Appointment of senior judge.

10 The minister may designate a judge to be a senior judge of such Provincial Judges Courts (Criminal Division) or Provincial Judges Courts (Family Division) or both, as are named in the designation.

S.M. 1972, c. 61, s. 10.

### Judge to devote full time to duties.

11 (1) Subject to subsection (4), every judge appointed on a full time basis shall devote his whole time to the performance of his duties as a judge and shall not

- (a) carry on, engage in, practise or conduct any business, trade, profession or occupation; or
- (b) act as commissioner, arbitrator, adjudicator, referee, conciliator, umpire, or mediator on any matter or proceeding;

except on the direction of the Lieutenant Governor in Council.

## PROVINCIAL JUDGES

### **No extra remuneration.**

11 (2) Except as provided in subsection (3), no judge appointed on a full time basis shall accept any salary, fee or other remuneration for doing any of the things mentioned in clauses (1)(a) and (b).

### **Expenses excepted.**

11 (3) A judge acting as a commissioner, arbitrator, adjudicator, referee, umpire, conciliator or mediator in any matter or proceeding on the direction of the Lieutenant Governor in Council may receive reasonable travelling and other expenses incurred by him away from his ordinary place of residence while acting in that capacity or in the performance of the duties and service of the office in the same amount and under the same conditions as if he were performing a function or duty as a judge if the expenses were paid by the government in respect of a matter within the legislative authority of the Legislature.

### **Winding up practice etc.**

11 (4) A judge newly appointed on a full time basis may, with the approval of the chief judge, wind up his practice of law or any other business, commercial or professional activities in which he was engaged within a reasonable time of his appointment.

S.M. 1972, c. 61, s. 11; S.M. 1980, c. 58, s. 20.

Note: Section 11 comes into force on March 31, 1981.

### **Exemption from liability.**

12 Except as provided in this Act, no action shall lie or be instituted against a judge, magistrate, or justice of the peace for any act done by him in the execution of his duty as such unless the act was done maliciously and without reasonable and probable cause.

S.M. 1972, c. 61, s. 12.

## PART II

### MAGISTRATES AND JUSTICES OF THE PEACE

#### **Appointment of magistrate and justice of the peace**

13 The Lieutenant Governor in Council may appoint on a full-time or part-time basis such magistrates and justices of the peace as he considers necessary who shall have jurisdiction throughout the province.

S.M. 1972, c. 61, s. 13.

#### **Payment of salaries.**

14 Every person appointed under section 13 may, subject to this Act

- (a) be paid such salary, fees or other remuneration as may be prescribed by the Lieutenant Governor in Council; or
- (b) be appointed as provided in The Civil Service Act.

S.M. 1972, c. 61, s. 14.



## PROVINCIAL JUDGES

### **Powers of magistrate.**

**15 (1)** Every magistrate has all the powers and authority vested in a magistrate or two or more justices of the peace sitting and acting together under any law or statute in force in Manitoba.

### **Powers under Criminal Code (Canada).**

**15 (2)** The Lieutenant Governor in Council may authorize a magistrate, by the terms of his appointment, to exercise the jurisdiction conferred upon a magistrate by Part XVI of the Criminal Code (Canada).

S.M. 1972, c. 61, s. 15.

### **Jurisdiction of justices of the peace.**

**16** Notwithstanding any law or statute to the contrary, a justice of the peace whose appointment has been duly made and is in force may hear, try, determine, and adjudge prosecutions, charges, matters and proceedings, in the following cases only:

- (a) In cases under Municipal by-laws.
- (b) In cases under any legislation enacted by the Legislature or the Parliament of Canada, in connection with which it is specifically provided that a justice of the peace may hear, try, determine, and adjudge prosecutions, charges, matters, and proceedings, in cases that arise under that legislation.

S.M. 1972, c. 61, s. 16.

### **Performance bond.**

**17** A magistrate or justice of the peace before entering upon the duties of his office, shall furnish such security for due performance of his duties as the Lieutenant Governor in Council may prescribe.

S.M. 1972, c. 61, s. 17.

### **Oaths of office and allegiance.**

**18** Every magistrate and justice of the peace before entering upon the duties of his office shall take and subscribe an oath of office similar in form to the oath set out in section 3, mutatis mutandis, and also an oath of allegiance as required by The Civil Service Act, which shall be sent forthwith by the magistrate or justice of the peace to the chief judge who shall send such oaths to the Clerk of the Executive Council together with such copies thereof as may be directed by the minister.

S.M. 1972, c. 61, s. 18.

### **Penalty.**

**19** Any person who acts as a magistrate or justice of the peace without first complying with sections 17 and 18, or after the termination of his appointment as a magistrate or justice of the peace, is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars.

S.M. 1972, c. 61, s. 19.

## PROVINCIAL JUDGES

### PART III

#### PROVINCIAL JUDGES COURTS (CRIMINAL DIVISION)

##### **Establishment of Provincial Judges Courts (Criminal Division).**

20 (1) The Lieutenant Governor in Council may, by order, establish a court of record for any area within the province presided over by a judge and that court shall be styled

"Provincial Judges Court (Criminal Division) of ....."  
(naming the area).

S.M. 1972, c. 61, s. 20; S.M. 1977, c. 5, s. 7.

.....

##### **Judge to exercise powers of magistrate or justices of the peace.**

21 A judge sitting in a Provincial Judges Court (Criminal Division) shall exercise the powers and perform the duties vested in him as a magistrate, provincial magistrate or one or more justices of the peace under section 8.

S.M. 1972, c. 61, s. 21.

.....

### PART IV

#### PROVINCIAL JUDGES COURTS (FAMILY DIVISION)

##### **Establishment of Provincial Judges Courts (Family Division).**

23 (1) The Lieutenant Governor in Council may, by order, establish a court of record for any area within the province presided over by a judge and that court shall be styled

"Provincial Judges Court (Family Division) of ....."  
(naming the area).

.....

##### **Jurisdiction.**

23 (3) Each Provincial Judges Court (Family Division)

- (a) is a juvenile court for the purpose of dealing with juvenile delinquents and has all the powers vested in a juvenile court under the Juvenile Delinquents Act (Canada);
- (b) has power to try any child charged with an offence against the laws of Manitoba; and
- (c) has power to deal with all cases where jurisdiction is conferred by any Act upon a juvenile court or a judge thereof or upon a family court or a judge thereof or upon a juvenile and family court or a judge thereof or upon a Provincial Judges Court (Family Division).



## PROVINCIAL JUDGES

### Jurisdiction respecting enforcement.

**23 (3.1)** For the purpose of enforcement of orders made under The Family Maintenance Act and orders made under The Wives' and Children's Maintenance Act, each Provincial Judges Court (Family Division)

(a) has the like powers as are possessed by the Court of Queen's Bench of enforcing its judgments and orders in any part of the province, and may issue the like writs and processes as may be issued by that court, and such writs and processes have like force and effect as those issued out of the Court of Queen's Bench; and.

(b) may examine, or cause to be examined, a judgment debtor touching his estate and effects and his property or means and any disposition thereof, and may, upon the examination on default in appearance thereof of the debtor, or in the case of default in payment, order that during the continuance of the default the debtor, as against the judgment creditor, be deprived of all exemptions to which he is entitled under The Executions Act or The Garnishment Act.

.....

### Filing of maintenance orders in Provincial Judges Court.

**23 (4)** A person entitled to alimony or maintenance payments under a judgment or order of the Court of Queen's Bench or a County Court may file a copy of the judgment or order in The Provincial Judges Court (Family Division) having jurisdiction where the person ordered to pay alimony or maintenance resides and when so filed, the judgment or order may be enforced in the same manner as if the judgment or order was made by a judge of that Provincial Judges Court (Family Division) under The Family Maintenance Act.

S.M. 1972, c. 61, s. 23; S.M. 1977, c. 5, s. 7  
and c. 61, s. 12(2); S.M. 1977(2nd), c. 4, s. 5;  
S.M. 1980, c. 55, s. 14 and c. 58, s. 21.

### Exercise of powers.

**24** A judge, sitting in a Provincial Judges Court (Family Division) shall exercise the powers and perform the duties vested in him as a judge of the juvenile and family court under section 8.

S.M. 1972, c. 61, s. 24.

.....

### Transfer of action to County Court or Queen's Bench.

**25.2 (1)** Where an action or proceeding in a Provincial Judges Court (Family Division) could have been brought in a County Court or the Court of Queen's Bench, any party to the action or proceeding may, with the consent of all other parties to the action or proceeding, apply to the Provincial Judges Court (Family Division) at any time before the date for hearing is fixed to have the action or proceeding referred to a County Court or the Court of Queen's Bench, as the case may be, and the Provincial Judges Court (Family Division) shall refer the action or proceeding and transfer all pleadings and documents filed in the action or proceeding in The Provincial Judges Court (Family Division) to the appropriate County Court or to the Court of Queen's Bench, as the case may require, and the County Court or Court of Queen's Bench shall receive the action or proceeding, including any counterclaims, and all pleadings and documents filed in connection therewith, and those pleadings and documents shall be deemed to be pleadings and documents filed in the County Court or the Court of Queen's Bench as the case may be.

S.M. 1978, c. 26, s. 1.

.....



PROVINCIAL JUDGES

**Voting at election.**

**30** No judge or magistrate shall engage in any manner whatever, in partisan, political activities.

S.M. 1972, c. 61, s. 30.

.....

**Exercise of certain jurisdiction.**

**32** Every magistrate is a judge of the Provincial Judges Courts (Family Division).

S.M. 1972, c. 61, s. 32.

.....

FUNDAMENTAL RIGHTS



LIBERTÉS FONDAMENTALES





## FUNDAMENTAL RIGHTS

### Introduction

In addition to fundamental rights guaranteed by federal legislation referred to in volume 2 of this collection (Chapter H), fundamental rights are also protected by the following provincial statutes of Manitoba, reproduced below:

1. Human Rights Act, S.M. 1974, c. 65, as amended.
2. Privacy Act, S.M. 1970, c. 74, as amended.

Other statutes of Manitoba, not reproduced here, contain provisions concerning fundamental rights, such as:

1. Personal Investigations Act, S.M. 1971, c. 23; C.C.S.M. c. P33.
2. Labour Relations Act, S.M. 1972, c. 75, as amended.
3. Employment Standards Act, R.S.M. 1970, c. E110, as amended.

### Selected references:

Tarnopolsky, Walter S. "Legislative Jurisdiction with Respect to Anti-Discrimination (Human Rights) Legislation in Canada", (1980), 12 Ottawa Law Review 1-47.

## LIBERTÉS FONDAMENTALES

### Introduction

Outre la législation fédérale signalée au chapitre H du volume 2 de cette collection, les lois provinciales suivantes, reproduites ci-après, assurent la protection des libertés fondamentales au Manitoba:

1. Human Rights Act, S.M. 1974, c. 65 et ses modifications
2. Privacy Act, S.M. 1970, c. 74 et ses modifications

D'autres lois manitobaines, non reproduites ici, renferment des dispositions relatives aux libertés fondamentales. Parmi celles-ci, il y a lieu de signaler:

1. Personal Investigations Act, S.M. 1971, c. 23; C.C.S.M. c. P33
2. Labour Relations Act, S.M. 1972, c. 75 et ses modifications
3. Employment Standards Act, R.S.M. 1970, c. E110 et ses modifications.

### Source choisie:

Tarnopolsky, Walter, "Legislative Jurisdiction with Respect to Anti-Discrimination (Human Rights) Legislation in Canada", (1980) 12 Ottawa Law Review, pp. 1-47.

## HUMAN RIGHTS ACT

S.M. 1974, c. 65; C.C.S.M., c. H175

Amended by 1975, c. 42, s. 26; 1976, c. 48;  
1977, c. 46; 1978, c. 43

### Note:

This statute repeals the Human Rights Act assented to on August 13, 1970 (S.M. 1970, c. 104).

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## HUMAN RIGHTS ACT

S.M. 1974, c. 65; C.C.S.M., c. H175

Modifié par 1975, c. 42, art. 26; 1976, c. 48;  
1977, c. 46; 1978, c. 43

### Note:

La présente loi abroge celle sanctionnée le 13 août 1970 (S.M. 1970, c. 104).



## THE HUMAN RIGHTS ACT.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### Definitions.

#### 1 In this Act

- (a) "commercial unit" means any building, or other structure or part thereof that is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or any space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office or meeting room in any building or other structure or in a part thereof;
- (b) "Commission" means the Manitoba Human Rights Commission;
- (c) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- (d) "employment agency" includes a person who undertakes with or without compensation to procure employees and a person who undertakes with or without compensation to procure employment for persons;
- (d.1) "family status" for the purpose of this Act includes the status of an unmarried person or parent, a widow or widower or that of a person who is divorced or separated or the status of the children, dependants, or members of the family of a person;
- (e) "housing accommodation" means any place of dwelling, except a place of dwelling that is part of a building in which the owner or his family or both, reside where the occupants of the place of dwelling are required to share
  - (i) a bathroom or kitchen facility, or
  - (ii) a common entrance, except in a duplex, apartment building or condominium,
 with the owner of the dwelling or his family or both;
- (f) "minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act;
- (g) "national origin" includes the national origin of an ancestor;
- (h) "occupational association" means any organization, other than a trade union or employers' organization, in which membership is a prerequisite or from which licensing or certification is necessary, to carrying on a trade, occupation or profession;
- (i) "person" in addition to the extended meaning given it by The Interpretation Act, includes an employment agency, an employers' organization, a trade union, an occupational association, and a class of persons;
- (i.1) "physical handicap" means a physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes epilepsy, but is not limited to, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog, wheel chair or other remedial appliance or device;

## HUMAN RIGHTS

- (j) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers;
- (k) "wages" includes pay, salary, remuneration, lost benefits, out-of-pocket expenses and interest thereon.

S.M. 1974, c. 65, s. 1; S.M. 1976, c. 48, s. 1;  
S.M. 1977, c. 46, s. 1; S.M. 1978, c. 43, s. 1.

### PART I

## PROHIBITED DISCRIMINATORY PRACTICES

### Discrimination prohibited in notices, signs, etc.

2 (1) No person shall

- (a) publish, display, transmit or broadcast, or cause to be published, displayed, transmitted or broadcast; or
- (b) permit to be published, displayed, broadcast or transmitted to the public, on lands or premises, in a newspaper, through television or radio or telephone, or by means of any other medium which he owns or controls;

any notice sign, symbol, emblem or other representation

- (c) indicating discrimination or intention to discriminate against a person; or

- (d) exposing or tending to expose a person to hatred;

because of the race, nationality, religion, colour, sex, marital status, physical handicap, age, source of income, family status, ethnic or national origin of that person.

### Exception as to matters of opinion.

2 (2) Nothing in subsection (1) shall be deemed to interfere with the free expression of opinion upon any subject.

### Exception.

2 (3) Subsection (1) does not apply to the display of a notice, sign, symbol, emblem or other representation displayed to identify facilities customarily used by one sex.

S.M. 1974, c. 65, s. 2; S.M. 1976, c. 48, s. 2;  
S.M. 1977, c. 46, s. 2(a).

### Discrimination prohibited in public places.

3 (1) No person shall

- (a) deny to any person or class of persons any accommodation, service, or facility customarily available to the public; or
- (b) discriminate against any person or class of persons with respect to any accommodation, service, or facility customarily available to the public,



## HUMAN RIGHTS

unless reasonable cause exists for the denial or discrimination.

### Things that do not constitute reasonable cause.

3 (2) For the purposes of subsection (1)

- (a) the race, nationality, religion, colour, sex, age, marital status, physical handicap or ethnic or national origin of a person does not constitute reasonable cause; and
- (b) the sex of any person does not constitute reasonable cause unless it relates to the maintenance of public decency.

### Exception for person under the age of majority.

3 (3) Nothing in subsection (1) prevents the denial or refusal of any accommodation, services or facilities to a person who has not attained the age of majority, if the accommodation, services or facilities are not available to that person by virtue of any law or regulation in force in Manitoba.

S.M. 1974, c. 65, s.2; S.M. 1976, c.48, s.3; S.M. 1977, c. 46, s. 2(h).

### Discrimination prohibited in occupancy of commercial unit or housing accommodation.

4 (1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

- (a) deny to any person or any member of his family, the right to occupancy of any commercial unit or any housing accommodation; or
- (b) discriminate against any person or any member of his family with respect to any term or condition of occupancy of any commercial unit or housing accommodation,

unless reasonable cause exists for the denial or discrimination.

### Things that do not constitute reasonable cause.

4 (2) For the purposes of subsection (1), the race, nationality, religion, colour, sex, age, marital status, family status, physical handicap, ethnic or national origin, or the source of income of a person does not constitute reasonable cause.

### Accommodation may be restricted on basis of sex.

4 (3) Notwithstanding subsections (1) and (2) occupancy of all the housing accommodation in a building, except that of the owner or his family, may be restricted to individuals of the same sex.

### Preference for elderly persons.

4 (4) Nothing in subsection (1) prevents a person from giving preference to elderly persons of housing accommodation in any building that is designed or used primarily for elderly persons.

S.M. 1974, c.65, s.4; S.M. 1976, c.48, s.4; S.M. 1976, c.48, s.4; S.M. 1977, c.46, s.2(c)



## HUMAN RIGHTS

**Discrimination prohibited in the purchase of property.**

5 No person shall

- (a) deny to any person the opportunity to purchase any commercial unit or housing accommodation that is advertised or in any way represented as being available for sale; or
- (b) deny to any person the opportunity to purchase or otherwise acquire land or an interest in land that is advertised or in any way represented as being available for sale; or
- (c) discriminate against any person with respect to any term or condition of the purchase or other acquisition of any commercial unit, housing accommodation, land or interest in land that is advertised or in any way represented as being available for sale.

because of the race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin of that person.

S.M. 1974, c.65, s.5; S.M. 1976, c.48, s.5; S.M. 1977, c. 46, s. 2(d)

**Discrimination prohibited in employment.**

6 (1) Every person has the right of equality of opportunity based upon bona fide qualifications in respect of his occupation or employment or in respect of training for employment or in respect of an intended occupation, employment, advancement or promotion, and in respect of his membership or intended membership in a trade union, employers' organization or occupational association; and, without limiting the generality of the foregoing

- (a) no employer or person acting on behalf of an employer, shall refuse to employ, or to continue to employ or to train the person for employment or to advance or promote that person, or discriminate against that person in respect of employment or any term or condition of employment;
- (b) no employment or for training for employment agency shall refuse to refer a person for employment;  
and
- (c) no trade union, employers' organization or occupational association shall refuse membership to, expel, suspend or otherwise discriminate against that person; or negotiate, on behalf of that person, an agreement that would discriminate against him;

because of the race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin, or political beliefs or family status of that person.

**Discrimination prohibited in advertising.**

6 (2) No employer shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast, any words, symbol or other representation that indicate directly or indirectly that race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin or political belief or family status is or may be a limitation, specification or preference for a position of employment.

## HUMAN RIGHTS

### Discrimination prohibited in advertising on behalf of an employer.

6 (3) No person shall publish, display, circulate or broadcast or cause or permit to be published, displayed, circulated or broadcast any advertisement for a position of employment for or on behalf of an employer

(a) that contains any words, symbol, or other representation; or

(b) that is under a classification or heading;

indicating directly or indirectly that race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin or political belief or family status is or may be a limitation, specification or preference for the position of employment.

### Pre-employment inquiries.

6 (4) No person shall use or circulate any form of application for employment or make any written or oral inquiry that expresses either directly or indirectly any limitation, specification or preference as to race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin or political belief or family status of any person or that requires an applicant for employment to furnish any information concerning those particulars.

### Employment agencies.

6 (5) No employment agency shall discriminate against any person because of race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin or political belief or family status in receiving, classifying, disposing of or otherwise acting upon applications for its service or in referring an applicant for employment to an employer or anyone acting on behalf of the employer.

### Exception.

6 (6) The provisions of this section relating to any discrimination, limitation, specification or preference for a position or employment based on sex, age, marital status, physical handicap or political beliefs do not apply where sex, age, marital status or political belief is a reasonable occupational qualification and requirement for the position or employment.

### Exception.

6 (7) The provisions of this section relating to a limitation or preference in employment do not apply to an exclusively religious, philanthropic, educational, fraternal or social organization that is not operated for private profit and is operated primarily to foster the welfare of a group or class of persons characterized by a common race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin, where, in any such case, one or more of the above enumerated criteria is a bona fide occupational qualification and requirement.

### Exception.

6 (8) This section does not apply to a domestic employee or to be employed in a single family residence.



## HUMAN RIGHTS

### Exception for persons under the age of majority.

**6 (9)** Nothing in this section prevents a person from limiting the employment of a person under the age of majority or from classifying or referring to a person under the age of majority for employment in accordance with the provisions of any provincial law regulating the employment of persons under the age of majority.

### Exception for physical handicap.

**6 (10)** The provisions of this section prohibiting the discrimination against a person for a position or employment by reason of the physical handicap of the person do not apply where the nature and extent of the handicap reasonably precludes or renders the person incapable of satisfactorily discharging the duties of that position.

### Handicapped persons with training and experience.

**6 (11)** Notwithstanding subsection (10), no person shall refuse to employ a person who is physically handicapped, if the person has adequate training and experience and is qualified and capable to carry out the duties and functions of the position.

S.M. 1974, c.65, s.6; S.M. 1976, c.48, ss. 6-10;

S.M. 1977, c.46, ss. 2-4.

### Discrimination prohibited in contracts.

**7 (1)** No person shall, in making available to any person, a contract that is offered to the public generally,

(a) discriminate against any person; or

(b) include terms or conditions in any such contract that discriminate against a person;

on the basis of race, nationality, religion, colour, sex, age, marital status, physical handicap ethnic or national origin of that person.

### Exception.

**7 (2)** No provision of section 6 or subsection (1) shall prohibit a distinction on the basis of age, sex, family status, physical handicap or marital status

(a) of any employee benefit plan or in any contract which provides an employee benefit plan, if the Commission is satisfied on the basis of the guidelines set out in the regulations that the distinction is not discriminatory or that the employee benefit can be provided only if the distinction is permitted; or

(b) in any contract which provides life insurance, accident and sickness insurance or a life annuity to a specified person where the contract is not part of an employee benefit plan, if the Commission is satisfied on the basis of guidelines set out in the regulations that the distinction is not discriminatory or that the insurance or annuity can be provided only if the distinction is permitted.



## HUMAN RIGHTS

### **Automobile insurance contracts not affected.**

**7 (3)** Nothing in this Act prohibits a distinction on the basis of sex, age or marital status in any contract of automobile insurance offered or made available to the public under The Manitoba Public Insurance Corporation Act or The Insurance Act.

S.M. 1974, c.65, s.7; S.M. 1976, c.48, s.11; S.M. 1977, c.46, s.2(1)-(m); S.M. 1978, c.43, s.2.

### **Discrimination, etc., prohibited for taking part in proceeding under Act.**

**8** No person shall

- (a) refuse to employ or continue to employ any person;
- (b) threaten to dismiss to threaten to penalize in any other way any person in regard to his employment or any term or condition thereof;
- (c) discriminate against any person in regard to his employment or any term or condition thereof; or
- (d) intimidate or coerce or impose any pecuniary or other penalty upon any person;

on the ground that such person,

- (e) has made or may make a complaint under this Act;
- (f) has made or may make a disclosure concerning the matter complained of;
- (g) has testified or may testify in a proceeding under this Act; or
- (h) has participated or may participate in any other way in a proceeding under this Act.

En. S.M. 1974, c. 65, s. 8.

### **Special employment programs.**

**9** Notwithstanding the provisions of this Part, the Commission may, upon such conditions or limitations and subject to revocation or suspension, approve in writing a special plan or program by the Crown, any agency thereof, or any person designed to promote the socio-economic welfare and equality in status of a disadvantaged class of persons defined by race, nationality, religion, colour, sex, marital status, physical handicap, family status, age, source of income or ethnic or national origin of the members of that class of persons.

S.M. 1974, c.65, s.9; S.M. 1977, c.46, s.2(n);  
S.M. 1978, c.43, s.3.

## HUMAN RIGHTS

### PART II

#### ADMINISTRATION

##### **Manitoba Human Rights Commission established.**

10 (1) There is hereby established a commission to be called: "The Manitoba Human Rights Commission".

##### **Composition.**

10 (2) The Commission shall be composed of such numbers of persons as may be determined from time to time by the Lieutenant Governor in Council.

##### **Members.**

10 (3) The members of the Commission shall be appointed by the Lieutenant Governor in Council.

##### **Chairperson.**

10 (4) The Lieutenant Governor in Council shall designate one of the members as chairperson and one member as vice-chairperson.

##### **Vacancies.**

10 (5) The Lieutenant Governor in Council may fill any vacancy however created, in the membership of the Commission.

##### **Remuneration and term of office.**

10 (6) The Lieutenant Governor in Council may determine the term of office and the remuneration of the members of the Commission.

En. S.M. 1974, c. 65, s. 10.

##### **Responsibility.**

11 The Commission is responsible to the Minister for the administration of this Act.

En. S.M. 1974, c. 65, s. 11.

##### **Members of Commission continued in office.**

12 Those persons, who on the coming into force of this Act are members of the Commission, shall continue to hold office until their successors are appointed.

En. S.M. 1974, c. 65, s. 12.

## HUMAN RIGHTS

### Function.

13 The Commission has power to administer this Act and without limiting the generality of the foregoing, it is the function of the Commission,

- (a) to forward the principle that every person is free and equal in dignity and rights without regard to race, creed, religion, sex, colour, nationality, age, marital status, physical handicap ancestry or place of origin;
- (b) to promote an understanding of, acceptance of and compliance with this Act;
- (c) to develop and conduct educational programs designed to eliminate discriminatory practices related to race, creed, religion, sex, colour, nationality, age, marital status, physical handicap ancestry or place of origin;
- (d) to disseminate knowledge and promote understanding of the civil and legal rights of residents of the province and to conduct educational programs in that respect;
- (e) to further the principle of equality of opportunities and equality in the exercise of civil and legal rights regardless of status.

En. S.M. 1974, c. 65, s. 13; S.M. 1977, c. 46, s. 2 (o) - (p).

### Employment of personnel.

14 An executive director and such other officers and employees as may be required for the purpose of the administration of this Act, may be employed under The Civil Service Act.

En. S.M. 1974, c. 65, s. 14.

### Responsibility of the executive director.

15 The executive director of the Commission, in addition to such other duties, that he may be required to perform by law, shall

- (a) be responsible to the Commission for its day-to-day activities and operations; and
- (b) act as registrar of complaints received by the Commission to assure that they are dealt with according to the Act.

En. S.M. 1974, c. 65, s. 15.

### Confidentiality of information.

16 Except for the purposes of a prosecution under this Act, or proceedings before a board of adjudication, or in any court proceedings, or for the purpose of the administration and enforcement of this Act, no person shall, except with the consent of the commission

- (a) knowingly communicate, or allow to be communicated, to any person any information obtained by or on behalf of the commission or the Executive Director under this Act; or
- (b) knowingly allow any person to inspect, or to have access to, any copy of any book, record, document, file, correspondence, or other record obtained by, or on behalf of, the commission or the Executive Director under this Act.

S.M. 1974, c. 65, s. 16; S.M. 1976, c. 48, s. 12.



## HUMAN RIGHTS

### Costs of administration.

17 The costs of administering this Act shall be paid from and out of the Consolidated Fund with moneys authorized by an Act of the Legislature to be so paid and applied.

En. S.M. 1974, c. 65, s. 17.

### Annual report.

18 (1) The Commission shall prepare annually and submit to the Minister, a report of the activities of the Commission and boards of adjudication during the preceding year.

### Annual report.

18 (2) The Minister shall lay forthwith the report before the Legislative Assembly if it is in session and if not, within 15 days of the commencement of the next ensuing session.

En. S.M. 1974, c. 65, s. 18; S.M. 1976, c. 48, s. 13.

## PART III

### ENFORCEMENT OF ACT

#### Complaints.

19 (1) Any person who has reasonable grounds for believing that any person has contravened a provision of this Act, may file with the Commission a complaint in the form prescribed by the Commission, such complaint to be filed with the Commission not later than 6 months after the date of the alleged contravention or, where a continuing contravention is alleged, after the date of the last alleged contravention of this Act.

#### Consent of offended person.

19 (2) Where a complaint is made by a person other than the person whom it is alleged was dealt with contrary to the provisions of this Act, the Commission may refuse to file the complaint unless the person alleged to be offended against consents thereto.

#### Complaints initiated by Commission.

19 (3) Where the Commission has reason for believing that any person has contravened a provision of this Act in respect of a person or group of persons, the Commission may initiate a complaint.

#### Commission may dismiss complaint.

19 (4) Where the Commission is satisfied that a complaint is without merit, it may dismiss the complaint at any stage of the proceeding.

S.M. 1974, c. 65, s. 19; S.M. 1978, c. 43, s. 4.

## HUMAN RIGHTS

### Settlement of contravention.

20 The Commission shall, as soon as is reasonably possible, investigate any complaint of an alleged contravention of the Act.

S.M. 1974, c.65, s.20; S.M. 1976, c.48, s.14.

### Powers of commission after investigation.

21 (1) The commission, after investigating the complaint, may

- (a) endeavour to effect a settlement of the complaint of an alleged contravention of the Act, and failing settlement of the complaint, the commission may request the minister to appoint a board of adjudication to hear and decide the complaint; or
- (b) request the minister to appoint a board of adjudication to hear and decide the complaint; or
- (c) recommend that the minister commence a prosecution for an offence under this Act.

### Appointment of board.

21 (2) The minister shall, within a reasonable time after the receipt of a request under clause (1) (a) or (b) appoint a board of adjudication consisting of one or more persons to hear and decide the complaint.

### Prohibition.

21 (3) No person appointed to a board of adjudication shall have taken part in any investigation or consideration of the complaint prior to the inquiry by a board of adjudication.

S.M. 1974, c.65, s.21; S.M. 1976, c.48, s.15.

### Powers of Commission and board of adjudication.

22 The Commission and any board of adjudication appointed under this Act may determine their procedure and each member of a board of adjudication has all the powers of a commissioner under Part V of The Manitoba Evidence Act, and Part V excepting section 88 of that Act, applies to any investigation being made by the Commission or any inquiry being made by a board of adjudication but no notice of the authorization or of the purpose or scope of the investigation or inquiry, as the case may be, is to be made by the Commission or board of adjudication and no notice of the time and place of the investigation or inquiry need be published as required under section 88 of that Act.

En. S.M. 1974, c. 65, s. 22.

### Access to premises and documents.

23 (1) For the purpose of investigating a specific complaint under this Act, the executive director, any person with the written authorization of the executive director, or the board of adjudication,

## HUMAN RIGHTS

- (a) shall have access during normal business hours to any land, residence or business premises of any person with respect to whom there is reasonable and probable grounds to believe that such access will assist the investigation of the complaint; and
- (b) may inspect such specific documents, correspondence and records relevant to the complaint and may make copies thereof or take extracts therefrom.

**Court order for access.**

**23 (2)** Where a person refuses to grant access or to produce documents, correspondence or records as required under subsection (1), the executive director or a board of adjudication may on an ex parte application to a judge of the County Court or Provincial Judges Court, apply for an order granting him access to the land, residence, business premises, documents, correspondence or records, as the case may; and the judge, if he is satisfied that the authority for access is reasonable and necessary, may grant the order.

**Information confidential.**

**23 (3)** Except for the purposes of a prosecution under this Act, or any court proceeding or for the purpose of the administration and enforcement of this Act, no person shall

- (a) knowingly communicate, or allow to be communicated to any person any information obtained under this section; or
- (b) knowingly allow any person to inspect, or to have access to, any copy of any document, correspondence or record, obtained under this section.

**Exception.**

**23 (4)** Subsection (3) does not prohibit

- (a) the communication of any information by the executive director or a board of adjudication or by a person acting under the authority of the executive director, to persons charged with the administration of any Statutes of Canada or any other province that relate to the subject matter of this Act; or
- (b) the communication of any information with the consent of the person to whom the information relates; or
- (c) the release or publication by the executive director or the board of adjudication, with the consent of the owner, of any document, correspondence or record or any copy thereof.

S.M. 1974, c.65, s.23; S.M. 1976, c.48, s.16.

**Obstruction.**

**24** No person shall hinder, obstruct, molest, or interfere with or attempt to hinder, obstruct, molest or interfere with, the Commission or a person acting under the authority of the Commission or a board of adjudication in the exercise of their powers and duties under this Act.

En. S.M. 1974, c. 65, s. 24.



## HUMAN RIGHTS

### Hearing.

25 (1) Upon the appointment of a board of adjudication the board shall without undue delay hold a public hearing for the purpose of inquiry into and deciding the complaint.

### Evidence before board.

25 (2) The board of adjudication may receive and accept, on oath, affidavit, or otherwise, such evidence or information as it, in its discretion, considers necessary and appropriate, whether or not such evidence or information would be admissible in a court of law.

### Administration of oath.

25 (3) Any member of the board of adjudication may administer an oath or affirmation to any witness who is called to give evidence before the board.

### Notice to parties.

25 (4) Before proceeding to hold a hearing, the board of adjudication shall give at least 10 days written notice of the date, time and place of the hearing to all the parties thereto, and a copy of the complaint shall be annexed to the notice.

### Full opportunity to be heard.

25 (5) The board of adjudication shall give to all parties to a hearing being conducted by it full opportunity to be represented by counsel, to present evidence and to make submissions.

### Exclusive jurisdiction of board to decide law and fact.

25 (6) Subject to appeal under subsection 30 (1), the board of adjudication has exclusive jurisdiction and authority to determine any question of fact or law or both required to be decided in reaching a decision as to whether or not any party has contravened this Act or for the making of any order pursuant to such decision.

S.M. 1974, c.65, s.25; S.M. 1976, c.48, s.17.

### Parties to a hearing.

26 The parties to a hearing before a board of adjudication with respect to a complaint that is being inquired into by the board are,

- (a) the Commission, which shall have the carriage of the complaint;
- (b) the person named in the complaint as the complainant;
- (c) any person named in the complaint and alleged to have been dealt with contrary to the provisions of this Act;
- (d) the accused or any person named in the complaint as alleged to have contravened this Act; and
- (e) any other person as may be determined by the board.

En. S.M. 1974, c. 65, s. 26.

## HUMAN RIGHTS

**Recording of oral evidence.**

**27** The oral evidence taken before a board of adjudication shall be recorded.

En. S.M. 1974, c. 65, s. 27.

**Powers of the board.**

**28 (1)** Where the board of adjudication decides that there has been no contravention of the Act by any party, it shall dismiss the complaint.

**Powers of board.**

**28 (2)** Where the board of adjudication decides that a party has contravened any provision of the Act, it may do one or more of the following things:

- (a) Make an order requiring the party who contravened the Act to do or refrain from doing anything in order to secure compliance with the Act.
- (b) Make an order requiring the party who contravened the Act to compensate the person discriminated against for all, or such part as a board may determine, of any wages or salary lost or expenses incurred by reason of the contravention of this Act.
- (c) Order the person who contravened the Act to pay to the person discriminated against, a penalty or exemplary damages in such amount as the board may determine, if the board is of the opinion that the person discriminated against suffered damages in respect of his feelings, or self-respect.

S.M. 1974, c.65, s.28; S.M. 1976, c.48, s.18.

**Order becoming judgment of court.**

**29 (1)** Subject to subsection (2), where a board of adjudication makes an order under clause 28 (2) (b) or (c) or both, it may file a certified copy thereof in the Court of Queen's Bench and upon the filing of the order, it becomes a judgment of the Court of Queen's Bench and may be enforced as a judgment of that court.

**When order may be filed.**

- 29 (2)** An order referred to in subsection (1) shall not be filed,
- (a) until the time for appeal therefrom has expired and no appeal is filed;  
or
  - (b) where an appeal is filed against the order, after the appeal is dismissed.

En. S.M. 1974, c. 65, s. 29; S.M. 1976, c.48, s.19.

**Appeal.**

**30 (1)** Any party to a hearing before a board of adjudication may appeal from a decision or order of the board, within 30 days from the making of the decision or order, to the Court of Queen's Bench.

## HUMAN RIGHTS

### Service of notice of appeal.

30 (2) A copy of the notice of appeal shall, within 7 days of the filing thereof be served personally or by registered mail by the appellant on all other persons who were parties to the hearing and on the board.

### Record to be filed on appeal.

30 (3) Forthwith upon the receipt of a notice of appeal under this section, the board of adjudication shall file with the Court of Queen's Bench, the record of the proceedings before it in which the decision or order appealed from was made which, together with a transcript of the oral evidence taken before the board, if it is not part of the record of the board, shall constitute the record in the appeal.

En. S.M. 1974, c. 65, s. 30.

### Powers of court.

31 An appeal under section 30 may be made on questions of law or fact, or both, and the court after hearing the appeal may,

- (a) affirm or reverse the decision or order of the board of adjudication
- (b) direct the board to make any other decision or order that the board is authorized to make under the Act; or
- (c) substitute its decision or order for that of the board.

En. S.M. 1974, c. 65, s. 31; S.M. 1976, c.48, s.20.

### Application to court for order for compliance.

32 Where a board of adjudication makes an order under clause 28 (a) and the person against whom the order is made refuses, fails or neglects to comply with the order or any part thereof, the minister may apply by way of Originating Notice of Motion to the Court of Queen's Bench for an order requiring the person to comply with the order of the board of adjudication or any part thereof.

En. S.M. 1974, c. 65, s. 32; S.M. 1976, c.48, s.21.

### Offences and penalties.

33 (1) Every person who,

- (a) deprives, abridges or restricts or attempts to deprive, abridge or restrict any person or class of persons in the enjoyment of a right under this Act;
- (b) contravenes any provision of this Act; or
- (c) fails, refuses or neglects to comply with an order of a board of adjudication, in whole or in part, other than an order or part of an order directing for the payment of wages;

is guilty of an offence and liable on summary conviction,

- (d) if an individual to a fine of not less than \$100.00 and not more than \$1,000.00; or
- (e) if a corporation, trade union, employers' organization, employment agency or occupational association, to a fine of not less than \$500.00 and not more than \$5,000.00.

### Laying of information.

33 (2) A prosecution for an offence under this Act may be commenced on the information of the Commission or any person alleging on behalf of himself or of any class of persons that an offence has been committed under this Act.



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### Prosecution of employers' organization, trade union or occupational association.

**33 (3)** A prosecution for an offence under this Act may be brought against an employer's organization, trade union, or occupational association in the name of the organization, union or association; and for the purpose of such a prosecution the organization, union or association shall be deemed to be a person, and any act or thing done or omitted by an officer or agent of such an organization, union, or association, shall be deemed to be an act or thing done or omitted by the employers' organization, trade union or occupational association.

### Limitation of time for prosecution.

**33 (4)** No information may be laid or prosecution commenced,

- (a) with respect to an alleged offence under this Act after the expiration of one year from the date of the alleged offence; or
- (b) with respect to the failure, refusal, or neglect to comply with an order or part of an order of a board of adjudication, after the expiration of one year from the date of the making of the order, or where an appeal was taken from the order and was dismissed, after the expiration of one year from the date of the dismissal of the appeal; or
- (c) with respect to the failure, refusal or neglect to comply with an order or part of an order of a board of adjudication where the board has allowed time for compliance therewith, after the expiration of one year from the date of expiration of the time allowed by the board to comply with the order.

### Consent to prosecution.

**33 (5)** No prosecution for an offence under this Act shall be instituted without the consent in writing of the minister.

### Technical defects.

**33 (6)** No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

En. S.M. 1974, c. 65, s. 33.

## PART IV

## MISCELLANEOUS

### Injunction.

**34** In addition to what may be permitted by this Act, a person who deprives abridges or otherwise restricts or attempts to deprive, abridge or otherwise restrict a person or class of persons in the enjoyment of a right under this Act because of the race, nationality, religion, colour, sex, age, marital status, physical handicap, ethnic or national origin, political belief, family status or source of income of the person, may be restrained by an injunction issued in an action in the Court of Queen's Bench brought by any person against the person responsible for the deprivation, abridgement or other restriction or any attempt thereat.

S.M. 1974, c.65, s.34; S.M. 1976, c.48, s.22;

S.M. 1977, c.46, s.2(q).

## HUMAN RIGHTS

### Regulations.

34.1 The Lieutenant Governor in Council may, for the purposes of section 7, make regulations prescribing guidelines which may be followed by, but are not necessarily binding upon, the Commission or a board of adjudication.

S.M. 1976, c.48, s.23.

### Crown bound.

35 The Crown, and every servant and agent of the Crown, is bound by this Act.

En. S.M. 1974, c. 65, s. 35.

PRIVACY ACT

S.M. 1970, c. 74; C.C.S.M., c. P125

Amended by S.M. 1971, c. 82, s. 49

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PRIVACY ACT

S.M. 1970, c. 74; C.C.S.M., c. P125

Modifié par S.M. 1971, c. 82, art. 49



## THE PRIVACY ACT.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

### Definitions.

1 In this Act

(a) "court" means the Court of Queen's Bench except in section 5 where it means any court and includes a person authorized by law to take evidence under oath acting for the purposes for which he is authorized to take evidence;

(b) "defamation" means libel or slander;

(c) "family" means the husband, wife, child, step-child, parent, step-parent, brother, sister, half-brother, half-sister, step-brother, step-sister, in each case whether legitimate or illegitimate, of a person.

S.M., 1970, c. 74, s. 1; S.M. 1971, c. 82, s. 49.

### Violation of privacy.

2 (1) A person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person.

### Action without proof of damage.

2 (2) An action for violation of privacy may be brought without proof of damage.

S.M., 1970, c. 74, s. 2.

### Examples of violation of privacy.

3 Without limiting the generality of section 2, privacy of a person may be violated

(a) by surveillance, auditory or visual, whether or not accomplished by trespass, of that person, his home or other place of residence, or of any vehicle, by any means including eavesdropping, watching, spying, besetting or following; or

(b) by the listening to or recording of a conversation in which that person participates, or messages to or from that person, passing along, over or through any telephone lines, otherwise than as a lawful party thereto or under lawful authority conferred to that end; or

(c) by the unauthorized use of the name or likeness or voice of that person for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to the user if, in the course of the use, that person is identified or indentifiable and the user intended to exploit the name or likeness or voice of that person; or

(d) by the use of his letters, diaries and other personal documents without his consent or without the consent of any other person who is in possession of them with his consent.

S.M., 1970, c. 74, s. 3.

### Remedies.

4 (1) In any action for violation of privacy the court may

(a) award damages; or

(b) grant an injunction if it appears just and reasonable; or

## PRIVACY

(c) order the defendant to account to the plaintiff for any profits that have accrued, or that may subsequently accrue, to the defendant by reason or in consequence of the violation; or

(d) order the defendant to deliver up to the plaintiff all articles or documents that have come into his possession by reason or in consequence of the violation; or

(e) do any one or more of those things.

### Considerations in awarding damages.

**4 (2)** In awarding damages in an action for a violation of privacy of a person, the court shall have regard to all the circumstances of the case including

(a) the nature, incidence and occasion of the act, conduct or publication constituting the violation of privacy of that person;

(b) the effect of the violation of privacy on the health, welfare, social, business or financial position of that person or his family;

(c) any relationship, whether domestic or otherwise, between the parties to the action;

(d) any distress, annoyance or embarrassment suffered by that person or his family arising from the violation of privacy; and

(e) the conduct of that person and the defendant, both before and after the commission of the violation of privacy, including any apology or offer of amends made by the defendant.

### Accounting not considered in awarding damages.

**4 (3)** Notwithstanding anything in subsection (2), in awarding damages in an action for violation of privacy of a person, the court shall not have regard to any order made under clause (c) of subsection (1) in respect of the violation of privacy.

S.M., 1970, c. 74, s. 4.

### Defences.

**5** In an action for violation of privacy of a person, it is a defence for the defendant to show

(a) that the person expressly or by implication consented to the act, conduct or publication constituting the violation; or

(b) that the defendant, having acted reasonably in that regard, neither knew or should reasonably have known that the act, conduct or publication constituting the violation would have violated the privacy of any person; or

(c) that the act, conduct or publication in issue was reasonable, necessary for, and incidental to, the exercise or protection of a lawful right of defence of person, property, or other interest of the defendant or any other person by whom the defendant was instructed or for whose benefit the defendant committed the act, conduct or publication constituting the violation; or

(d) that the defendant acted under authority conferred upon him by a law in force in the province or by a court or any process of a court; or

(e) where the act, conduct or publication constituting the violation was

(i) that of a peace officer acting in the course of his duties; or

(ii) that of a public officer engaged in an investigation in the course of his duty under a law in force in the province;



## PRIVACY

that it was neither disproportionate to the gravity of the matter subject to investigation nor committed in the course of a trespass; and was within the scope of his duties or within the scope of the investigation, as the case may be, and was reasonably necessary in the public interest;

(f) where the alleged violation was constituted by the publication of any matter

(i) that there were reasonable grounds for the belief that the publication was in the public interest; or

(ii) that the publication was, in accordance with the rules of law in force in the province relating to defamation, privileged; or

(iii) that the matter was fair comment on a matter of public interest.

S.M., 1970, c. 74, s. 5.

### Right of action in addition to other rights.

6 The right of action for violation of privacy under this Act and the remedies under this Act are in addition to, and not in derogation of, any other right of action or other remedy available otherwise than under this Act; but this section shall not be construed as requiring any damages awarded in an action for violation of privacy to be disregarded in assessing damages in any other proceedings arising out of the same act, conduct or publication constituting the violation of privacy.

S.M., 1970, c. 74, s. 6.

### Effect on law of evidence.

7 From and after the coming into force of this Act, no evidence obtained by virtue or in consequence of a violation of privacy in respect of which an action may be brought under this Act is admissible in any civil proceedings.

S.M., 1970, c. 74, s. 7.

### Application of Act.

8 (1) Notwithstanding any other Act of the Legislature, whether special or general, this Act applies where there is any violation of the privacy of any person.

### Conflict with other Acts.

8 (2) Where there is a conflict between a provision of this Act and a provision of any other Act of the Legislature, whether general or special, the provision of this Act prevails.

S.M., 1970, c. 74, s. 8.



LANGUAGE RIGHTS



DROITS LINGUISTIQUES



## LANGUAGE RIGHTS

### Introduction

At the time of its admission into Confederation in 1890, the population of Manitoba was composed of a French majority and an English minority. This explains why language rights in Manitoba are concerned mainly with these two languages, even if now only 5.4% of the population of the province claim French as their mother tongue (1976 census). Indeed, in addition to the federal legislation discussed in volume 2 of this collection (Chapter I), the following statutes sanction the bilingual character of the province in such matters as the proceedings and the editing of debates of the Legislative Assembly, the publication of provincial statutes, the administration of justice, and the instruction in public schools:

#### 1. Manitoba Act, 1870.

Section 23 of this statute, reproduced in volume 1 of this collection, pp. B67, and subs., guarantees the optional use of either the English or French language in the debates of the Legislature of Manitoba or in the courts of the province, as well as the compulsory use of these two languages in the records and journals of the provincial Legislature and the printing and publication of provincial statutes. Notwithstanding these provisions, the Legislature of Manitoba passed in 1890 a statute entitled: An Act to Provide that the English Language Shall Be the Official Language of the Province of Manitoba (S.M. 1890, c. 14; R.S.M. 1970, c. O10), which contains the following two provisions:

#### "English language in assembly and courts.

1(1) Any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the Legislative Assembly of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba.

#### Statutes.

1(2) The Acts of the Legislature of Manitoba need be printed and published only in the English Language. R.S.M., c. 187, s. 1.

#### Act to apply only within the jurisdiction of Legislature.



2 This Act applies only so far as the Legislature has jurisdiction to enact. R.S.M., c. 187, s. 2."

It was not until July 9, 1980, that this statute of 1890 was repealed by section 7 of another provincial statute entitled: An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes (S.M. 1980, c. 3), reproduced above under "Statutes and Regulations." This statute follows the decision of the Supreme Court of Canada delivered on December 13, 1979, in Attorney General of Manitoba v. Forest, (1979), 2 S.C.R. 1032, stating that the Legislature of Manitoba did not have the power to modify section 23 of the Manitoba Act.

2. Public Schools Act, S.M. 1970, c. 66, as amended.

According to provisions of its section 258, reproduced below, English and French are being recognized as the two languages of instruction in public schools of Manitoba, while the use of a language other than English or French is authorized under certain conditions. These provisions of section 258 have been assented to on July 16, 1970, and came into force on September 8, 1970. Until then, only English was the language of instruction in the public schools, while the use of French and other languages was authorized under certain conditions.

#### Selected references:

Magnet, Joseph Eliot, "Validity of Manitoba Laws After Forest: What Is to be Done?", 1980, 10 Manitoba Law Journal 241-257.

## DROITS LINGUISTIQUES

### Introduction

Au moment de son admission dans la Confédération en 1890, le Manitoba se composait d'une population à majorité francophone et à minorité anglophone. C'est ce qui explique qu'au Manitoba, la protection des droits linguistiques porte principalement sur l'usage de la langue française et de la langue anglaise, même si les francophones ne représentent plus que 5.4% de la population manitobaine (recensement 1976). En effet, outre la législation fédérale signalée au chapitre I du volume 2 de cette collection, les lois suivantes consacrent le caractère bilingue de la province dans les domaines de la conduite et de la rédaction des débats de l'Assemblée législative, de la publication des lois provinciales, de l'administration de la justice et de l'enseignement dans les écoles publiques:

#### 1. Acte du Manitoba, 1870

L'art. 23 de cette loi, reproduite intégralement aux pages B67 et suivantes du volume 1 de cette collection, garantit l'usage facultatif de l'anglais et du français dans les débats de la législature du Manitoba et devant les tribunaux de cette province, ainsi que l'usage obligatoire de ces deux langues dans la rédaction des archives, procès-verbaux et journaux de la législature manitobaine et dans l'impression et la publication des lois provinciales.

Nonobstant ces dispositions, le législateur manitobain adopta, dès 1890, la loi intitulée An Act to Provide that the English Language Shall Be the Official Language of the Province of Manitoba (S.M. 1890, c. 14; R.S.M. 1970, c. 010) qui contenait les deux dispositions suivantes:

"English language in assembly and courts.

1(1) Any statute or law to the contrary notwithstanding, the English language only shall be used in the records and journals of the Legislative Assembly of Manitoba, and in any pleadings or process in or issuing from any court in the Province of Manitoba.

Statutes.

1(2) The Acts of the Legislature of Manitoba need be printed and published only in the English Language.

R.S.M., c. 187, s. 1.

Act to apply only within jurisdiction of Legislature.

2 This Act applies only so far as the Legislature has jurisdiction to enact.  
R.S.M., c. 187, s. 2."

Ce n'est que le 9 juillet 1980 que cette loi de 1890 fut abrogée par l'art. 7 d'une autre loi provinciale intitulée An Act Respecting the Operation of Section 23 of the Manitoba Act in Regard to Statutes (S.M. 1980, c. 3) et reproduite au chapitre LOIS ET REGLEMENTS du présent fascicule. Cette dernière loi fait suite à l'arrêt de la Cour suprême du Canada rendu le 13 décembre 1979 dans l'affaire Le Procureur général du Manitoba c. Forest (1979) 2 R.C.S. 1033, déclarant que la législature du Manitoba n'avait pas le pouvoir de modifier l'art. 23 de l'Acte du Manitoba.

2. Public Schools Act, S.M. 1970, c. 66 et ses modifications  
En vertu des dispositions de l'art. 258 reproduites ci-après, le français et l'anglais sont reconnus comme langues d'enseignement dans les écoles publiques du Manitoba, alors que l'usage d'une langue autre que le français et l'anglais est permis de façon limitée et à certaines conditions. Ces dispositions de l'art. 258 ont été sanctionnées le 16 juillet 1970 et sont entrées en vigueur le 8 septembre 1970. Auparavant, seul l'anglais était la langue d'enseignement dans les écoles publiques, alors que l'utilisation du français et des autres langues n'était permise que de façon limitée et à certaines conditions

Source choisie:

Magnet, Joseph Eliot, "Validity of Manitoba Laws After Forest: What Is To Be Done?", (1980) 10 Manitoba Law Journal, pp. 241-257.



# PUBLIC SCHOOLS ACT

S.M. 1970, c. 66, s. 2

Amended by 1974, c. 25, s. 2; 1978, c. 38, s. 6

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S.M. 1970, c. 66, art. 2

Modifié par 1974, c. 25, art. 2; 1978, c. 38, art. 6

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## English and French as languages of instruction.

258 (1) Subject as otherwise provided in this section, English and French being the two languages to which reference is made in the British North America Act, 1867, are the languages of instruction in public schools.

## Use of other languages.

253 (2) When authorized by the board of a school district, school division or school area, a language other than English or French may be used in any school in the school district, school division or school area

- (a) during a period authorized for religious teaching;
- (b) during a period authorized by the minister for teaching a language other than English or French;
- (c) before and after the regular school hours prescribed in the regulations and applicable to that school;
- (d) as a language of instruction, for transitional purposes, in compliance with the regulations; and
- (e) in compliance with the regulations, as a language of instruction for not more than 50% of the regular school hours for pilot courses as determined by the minister.

## Establishment of English Language Advisory Committee.

258 (3) The minister shall establish a committee (hereinafter in this section referred to as the "English Language Advisory Committee") composed of nine persons to which he may refer matters pertaining to the use of English as a language of instruction in public schools.

## Membership of English Language Advisory Committee.

253 (4) The members of the English Language Advisory Committee, of whom

- (a) two shall be appointed from not less than four persons nominated by the Manitoba Association of School Trustees;
- (b) two shall be appointed from not less than four persons nominated by the Manitoba Teachers Society;

## PUBLIC SCHOOLS

- (c) one shall be appointed from not less than two persons nominated by the Faculty of Education of the University of Manitoba; and
  - (d) one shall be appointed from not less than two persons nominated by the Faculty of Education of the University of Brandon;
- shall be appointed by the minister for such terms as he may determine.

### **Establishment of French Language Advisory Committee.**

258 (5) The minister shall establish a committee (hereinafter in this section referred to as the "French Language Advisory Committee") composed of nine persons to which he may refer matters pertaining to the use of French as a language of instruction in public schools.

### **Membership of French Language Advisory Committee.**

- 258 (6) The members of the French Language Advisory Committee, of whom
- (a) two shall be appointed from not less than four persons nominated by l'Association des commissaires d'école de langue française du Manitoba;
  - (b) two shall be appointed from not less than four persons nominated by les éducateurs franco manitobains; and
  - (c) two shall be appointed from not less than four persons nominated by Le Collège de Saint Boniface;
- shall be appointed by the minister for such terms as he may determine.

### **Languages of Instruction Advisory Council.**

258 (7) The English Language Advisory Committee and the French Language Advisory Committee together constitute a council to be known as: "Languages of Instruction Advisory Council", to which the minister may refer matters pertaining to the operation of this section.

### **Use of English or French as language of instruction.**

- 258 (8) Where there are in any school district, school division or school area
- (a) twenty-eight or more pupils in an elementary grade who may be grouped in a class for instruction; or
  - (b) twenty-three or more pupils in a secondary grade who may be grouped in a class for instruction;

and whose parents desire them to be instructed in a class in which English or French, as the case may be, is used as the language of instruction, the board of the school district, school division or school area may, and upon petition of the parents of those pupils requesting the use of English or French, as the case may be, as the language of instruction in respect of those pupils, shall group those pupils in a class for instruction and provide for the use of English or French, as the case may be, as the language of instruction in the class.

## PUBLIC SCHOOLS

**Minister's discretion for fewer pupils.**

253 (9) Where the number of pupils concerned is less than the numbers mentioned in subsection (8) as requirements for the application of that subsection, the minister, where he considers it practical and upon the advice of the English Language Advisory Committee or the French Language Advisory Committee, as the case may be, may require the board of a school district, school division or school area to make arrangements for the use of English or French as the language of instruction in any class.

**Language of administration.**

258 (10) The administration and operation of a public school shall be carried out in the English language or the French language as the minister may, by regulation, provide.

**English as subject of instruction.**

258 (11) Notwithstanding any other provision of this Act, English

- (a) may be a subject of instruction in any grade; and
- (b) shall be a subject of instruction in every class in Grades IV, V, VI, VII, VIII, IX, X, XI, or XII where French is used as the language of instruction.

**Agreements by boards.**

253 (12) A board of a school district, school division or school area may enter into an agreement with the board of another school district, school division or school area for providing jointly, classes in which the language used for instruction is English or French as the case may be, and the pupils in those classes may be included in the numbers required to meet the requirements of any provision of this section or the regulations.

**Regulations.**

258 (13) The Minister may make regulations for carrying this section into effect.

S.M. 1970, c. 66; S.M. 1974, c. 25, s.2; S.M. 1978, c. 38, s. 6.





NATIVE RIGHTS



DROITS DES AUTOCHTONES





## NATIVE RIGHTS

### Note:

Manitoba has 56 Indian bands, with a total registered membership of 42,311 (1976 census), 96 reserves, with a total acreage of 515,375, and 2 settlements (1975 data).

In addition to federal legislation pertaining to native rights referred to in volume 2 of this collection (Chapter J), the provincial legislation, described briefly but not reproduced below, deals with some aspects of native rights:

1. Manitoba Natural Resources Act, R.S.M. 1970, c. N30, as amended.

Note: This provincial statute ratifies the federal Manitoba Natural Resources Act (S.C. 1930, c. 29, as amended), reproduced in volume 2 of this collection, pp. D95 to D126. Paragraphs 11 to 13 of the Memorandum of Agreement contained in the Schedule of this statute, deals with the property and the administration of Indian reserves in Manitoba. These provisions secure to the Indians of the province the right of fishing and hunting for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which they may have a right of access, subject, however, to follow existing provincial statutes in this matter.

Other provincial statutes contain some provisions dealing with native rights, and among the most important, the following should be mentioned:

1. Crown Lands Act, R.S.M. 1970, c. C340, as amended.
2. Liquor Control Act, R.S.M. 1970, c. L160, as amended.
3. Mental Health Act, R.S.M. 1970, c. M110, as amended.
4. Wildlife Act, R.S.M. 1970, c. W140, as amended.

## DROITS DES AUTOCHTONES

### Note:

Le Manitoba compte 56 bandes indiennes pour une population inscrite de 42,311 habitants (recensement 1976), ainsi que 96 réserves d'une superficie totale d'environ 517,375 âcres en 1975 et 2 établissements.

Outre la législation fédérale reproduite ou signalée au chapitre J du volume 2 de cette collection, la législation provinciale résumée ci-après, mais non reproduite, traite des droits des autochtones:

1. Manitoba Natural Resources Act, R.S.M. 1970, c. N30, et ses modifications

Cette loi provinciale ratifie la Loi des ressources naturelles du Manitoba (S.C. 1930, c. 29 et ses modifications) adoptée par le législateur fédéral et reproduite aux pages D95 et suivantes du volume 2 de cette collection. Les clauses 11 à 13 de la convention contenue en annexe de cette loi traitent de la propriété et de l'administration des réserves indiennes au Manitoba et consacrent le droit des Indiens de pêcher et chasser en tout temps pour leur subsistance sur les terres inoccupées de la Couronne et sur toutes les autres terres auxquelles ils peuvent avoir un droit d'accès, tout en les soumettant à l'application des lois provinciales en vigueur dans ces domaines.

D'autres lois provinciales contiennent certaines dispositions relatives aux droits des autochtones. Parmi les plus importantes, il convient de signaler les suivantes:

1. Crown Lands Act, R.S.M. 1970, c. C340 et ses modifications
2. Liquor Control Act, R.S.M. 1970, c. L160 et ses modifications
3. Mental Health Act, R.S.M. 1970, c. M110 et ses modifications
4. Wildlife Act, R.S.M. 1970, c. W140 et ses modifications

EMERGENCY MEASURES



MESURES D' URGENCE



## EMERGENCY MEASURES

### Note:

Manitoba does not have provincial legislation comparable with the federal War Measures Act, reproduced in volume 2 of this collection, Chapter L. The province is subject to this federal statute, and has passed its own Emergency Measures Act (R.S.M. 1970, c. E80, as amended). This statute, not reproduced here, authorizes the Lieutenant Governor in Council to declare a state of emergency in times of war or civil disaster, in order to ensure the peace, order, and protection of persons and property in the territory of Manitoba.

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## MESURES D'URGENCE

### Note:

Le Manitoba ne dispose d'aucune loi dont la portée est comparable à celle de la Loi sur les mesures de guerre adoptée par le Parlement du Canada et reproduite au chapitre L du volume 2 de cette collection. Quoique soumise à cette loi, cette province a tout de même adopté l'Emergency Measures Act (R.S.M. 1970, c. E80 et ses modifications). Cette loi, non reproduite ici, donne notamment au lieutenant-gouverneur en conseil le pouvoir de décréter l'état d'urgence en cas de guerre ou de désastre aux fins d'assurer l'ordre et la protection civile des personnes et des biens sur le territoire manitobain.

MISCELLANEOUS



DIVERS





## COAT OF ARMS, FLAG AND EMBLEMS

### Introduction

The coat of arms and various emblems of Manitoba are the subject of a statute entitled Coat of Arms, Floral Emblem and Tartan Act, reproduced below. The coat of arms of this province was granted by royal warrant of King Edward VII, dated May 10, 1905, a copy of which is annexed to this statute as Schedule A. It is formed by the cross of St. George at the top, and below a buffalo standing on a rock, on a green field. This coat of arms is reproduced on the official flag of the province. This flag consists of the Red Ensign with the Royal Union Flag, known as the Union Jack, in the upper left-hand corner, and the provincial shield of the arms in the fly. The official flag was adopted by a statute, reproduced below, assented to on May 11, and proclaimed into force on May 12, 1965.

### Selected references:

- Canada, Dept. of the Secretary of State, The Arms, Flags, and Emblems of Canada, Ottawa, Supply and Services Canada, 1978, pp. [44-46 ]
- Swan, Conrad, Canada: Symbols of Sovereignty, Toronto, University of Toronto Press, 1977, pp. 195-199.

## ARMOIRIES, DRAPEAU ET EMBLEMES

### Introduction

Les armoiries et les divers emblèmes du Manitoba font l'objet d'une loi intitulée Coat of Arms, Floral Emblem and Tartan Act et reproduite ci-après. Les armoiries de cette province ont été accordées par décret du roi Edouard VII en date du 10 mai 1905 et dont copie est jointe en annexe A de la présente loi. Elles se composent de la croix de Saint-Georges au sommet, suivie, dans la partie centrale sur fond vert, d'un bison debout sur un roc qui forme la base de l'écu. Ces armoiries sont reproduites sur le drapeau officiel de la province. Ce drapeau est le Red Ensign sur lequel sont reproduits le drapeau Royal Union, mieux connu sous le nom d'Union Jack, qui occupe le canton, et les armoiries de la province placées sur le battant. Le drapeau officiel a été adopté en vertu d'une loi sanctionnée le 11 mai 1965 et proclamée en vigueur le 12 mai 1966; cette loi est reproduite ci-après.

### Sources choisies

Canada, Secrétariat d'état, Les armoiries, drapeaux et emblèmes du Canada, Ottawa, Approvisionnement et Services Canada, 1978, pp. [44-46].

Swan, Conrad, Canada: Symbols of Sovereignty, Toronto, University of Toronto Press, c. 1977, pp. 195-199.

# **AN ACT RESPECTING THE ARMORIAL ENSIGNS AND THE FLORAL EMBLEM OF MANITOBA AND THE MANITOBA TARTAN.**

R.S.M. 1970, c. C150

WHEREAS, by Royal Warrant, Armorial Ensigns were granted to the province by His late Majesty King Edward VII; and it is deemed expedient to make provision respecting the use thereof;

AND WHEREAS it is deemed wise and expedient to adopt a floral emblem of the province;

AND WHEREAS it is believed that the flower botanically called the anemone patens, and popularly known as the "crocus" is most appropriate for the purpose;

AND WHEREAS it is deemed expedient to adopt a tartan for, and for the use, under certain conditions, of the citizens of, the province;

THEREFOR HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

## **Short title.**

**1** This Act may be cited as: "The Coat of Arms, Floral Emblem and Tartan Act".

R.S.M., c. 42, s. 1; am. S.M., 1962, c. 7, s. 2.

## **Grant of Armorial Ensigns confirmed.**

**2** The Armorial Ensigns (sometimes popularly called "the Coat of Arms") of the province are the Armorial Ensigns granted by Royal Warrant of His late Majesty King Edward VII, dated the tenth day of May, 1905, and therein described, a certified copy of which Royal Warrant is deposited in the Legislative Library, whereof a copy is set out in Schedule A, and a pictorial representation of which Armorial Ensigns, printed in black and white, is set out in Schedule B.

R.S.M., c. 42, s. 2.

## **No user of Armorial Ensigns without permission.**

**3(1)** Subject to subsection (2), unless by express permission granted by order of the Lieutenant Governor in Council, no person other than the Government of Manitoba, or a member of the Executive Council for the purposes of the government, shall mark, print, carve, engrave, or otherwise delineate or reproduce, on any thing, or publish, display, or make use of, the Armorial Ensigns of the province, either in the authorized colours, or in black and white, or in any combination of colours, or otherwise, in such a way or for such purpose as to indicate or give the impression that the government, a member of the Executive Council, or a member of the Legislative Assembly, has any interest in, is associated with, or is responsible in any way for, that person or the object, land, or thing on, or in, or in respect of, which it is marked, printed, carved, engraved, delineated, reproduced, published, displayed or used.

Am. S.M., 1965, c. 13, s. 1; am.

## **M.L.A.**

**3(2)** A member of the Legislative Assembly may make use of stationery furnished to him by the Queen's Printer and bearing the Armorial Ensigns and so designed as to indicate that he is a member of the assembly.

R.S.M., c. 42, s. 3; am.



## ARMS AND FLORAL EMBLEM

### Conditions on grant of permission to use.

**4** Where permission is granted for the use by any person of the Armorial Ensigns, the use thereof may be limited as to place, occasion, time, or otherwise, as to the Lieutenant Governor in Council seems meet; and the permission may be granted subject to the payment of such fees, or the performance of such other conditions, as the Lieutenant Governor in Council may prescribe.

R.S.M., c. 42, s. 4.

### Application for permission.

**5(1)** Application for permission to make use of the Armorial Ensigns of the province may be made to the Provincial Secretary.

### Record of permits.

**5(2)** The Provincial Secretary shall keep a record of all permits for the use of the Armorial Ensigns granted under section 3.

R.S.M., c. 42, s. 5.

### Termination of former permits.

**6** Where permission for the use of the Armorial Ensigns of the province was, before the thirty-first day of March, 1952, granted to any person, that permission is now revoked and terminated; and hereafter no use of the Armorial Ensigns of the province shall be made by virtue of the permission so granted.

R.S.M., c. 42, s. 6; am.

### Floral emblem adopted.

**7** The flower known botanically as the anemone patens, and popularly called the "crocus" is adopted as, and is, the floral emblem of the province.

R.S.M., c. 42, s. 7; am.

### Adoption of tartan.

**8(1)** Subject as herein provided, the tartan

- (a) a description of the design or sett of which is set out in Schedule A to order in council 286/62, approved on the fifth day of March, 1962, a copy of a certified memorandum of which order in council and of Schedule A thereto, is set out in Schedule C to this Act; and
- (b) of which a sample in coloured textile material is on deposit in the offices of the Provincial Secretary; and
- (c) which has been registered in the books of the Court of the Lord Lyon, King of Arms, in Scotland, as the Manitoban Tartan;

is adopted as, and is, the tartan of the Province of Manitoba, and may be more briefly designated as "the Manitoba Tartan".

Am.

### Variation in description of colours.

**8(2)** Where in Schedule A to order in council 286/62 mention is made of a colour described therein as "tartan green", it shall be deemed to mean, and shall be interpreted as meaning, simply "green"; and where in Schedule A aforesaid mention is made of a colour described therein as "maroon", it shall be deemed to mean, and shall be interpreted as meaning, simply "murrey".

Am.

## ARMS AND FLORAL EMBLEM

### Use of Manitoba Tartan.

**8(3)** The use of the tartan to which reference is made in subsection (1) shall be governed by the considerations and limitations set forth in order in council 286/62 aforesaid.

Am.

### Order forbidding certain uses of tartan.

**8(4)** The Lieutenant Governor in Council may, by order in council, direct that the tartan or the design or sett thereof, or any representation thereof, shall not be used

- (a) in any manner; or
- (b) under any circumstances;

that is deemed unsuitable and that is specified in the order.

Am.

### Disobedience of order an offence.

**8(5)** An order made under subsection (4) is a regulation to which The Regulations Act applies, and any person who contravenes, disobeys, or refuses, fails, neglects, or omits to observe such an order is guilty of an offence.

En. S.M., 1962, c. 7, s. 3; am.

### Other Coats of Arms.

**9(1)** No person shall sell, display, publish, advertise or hold out

- (a) as Armorial Ensigns of the province, or as a Coat of Arms of the province; or
- (b) as Armorial Ensigns or Coats of Arms that have been confirmed, declared, adopted, or officially recognized as Armorial Ensigns or a Coat of Arms of the province by the Legislature of the province or by the government;

any Armorial Ensigns or Coats of Arms other than the Armorial Ensigns declared by this Act to be the Armorial Ensigns of the province.

### Other tartans.

**9(2)** No person shall sell, display, publish, advertise or hold out

- (a) as a tartan of the province; or
- (b) as a tartan that has been confirmed, declared, adopted, or officially recognized, as a tartan of the province by the Legislature of the province or by the government;

any tartan other than the tartan adopted by this Act as the tartan of the province.

En. S.M., 1968, c. 8, s. 1.

### Offence and penalty.

**10** Every person who contravenes or refuses, omits, neglects, or fails to observe or comply with, any provision of this Act is guilty of an offence and liable, on summary conviction, to a fine not exceeding one hundred dollars for every day during which the offence continues and in default of payment thereof to imprisonment for a term not exceeding three months.

R.S.M., c. 42, s. 8; am.



## ARMS AND FLORAL EMBLEM

## SCHEDULE A

(SEAL)

Edward R &amp; I

EDWARD the Seventh by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, To Our Right Trusty and Right Entirely beloved Cousin and Councillor Henry Duke of Norfolk Earl Marshal and Our Hereditary Marshal of England, Knight of Our Most Noble Order of the Garter, Knight Grand Cross of Our Royal Victorian Order, Greeting;

WHEREAS by virtue of and under the authority of an Act of Parliament passed in the Twenty ninth year of the Reign of Her late Majesty Queen Victoria entitled "The British North America Act 1867", it was (amongst other things) enacted that it should be lawful for The Queen by and with the advice of Her Majesty's Most Honourable Privy Council on an Address from the Houses of Parliament of Canada to admit Rupert's Land and the North Western Territory or either of them into the Union of Canada: And whereas The Queen did by her Royal Proclamation bearing date of the twenty third day of June 1870 declare, ordain and command that from and after the Fifteenth day of July 1870 the said North Western Territory and the said Rupert's Land should be admitted into and become part of the Dominion of Canada: And whereas by virtue of and under the authority of an Act of Parliament passed in the Thirty Fourth year of the Reign of Her late Majesty Queen Victoria entitled "The British North America Act 1871", it was (amongst other things) enacted that certain Acts passed by the Parliament of Canada and entitled respectively "An Act for the temporary government of Rupert's Land and the North Western Territory when united with Canada" and "An Act to amend and continue the Act 32 and 33 Victoria, and to establish and provide for the government of The Province of Manitoba", shall be and be deemed to be valid and effectual for all purposes whatsoever from the date at which they respectively received the Assent in The Queen's name, of the Governor General of the said Dominion of Canada.

And forasmuch as it is Our Royal Will and pleasure that for the greater honour and distinction of the said Province of Manitoba certain Armorial Ensigns should be assigned thereto.

KNOW YE therefore that We of Our Princely Grace and Special Favour have granted and assigned and do by these Presents grant and assign for The Province of Manitoba the Armorial Ensigns following that is to say "Vert on a Rock a Buffalo statant proper, on a Chief Argent the Cross of St. George", as the same are in the painting hereunto annexed more plainly depicted to be borne for the said Province on Seals, Shields, Banners, Flags or otherwise according to the Laws of Arms.

Our Will and pleasure therefore is that you Henry Duke of Norfolk to whom the cognizance of matters of this nature doth properly belong do require and command that this Our Concession and Declaration be recorded in Our College of Arms in order that Our Officers of Arms and all other Public Functionaries whom it may concern may take full notice and have knowledge thereof in their several and respective departments.

And for so doing this shall be your Warrant.

GIVEN at Our Court at St. James this Tenth day of May 1905, in the Fifth year of Our Reign.

By His Majesty's Command  
(Signed) ALFRED LYTTTELTON

I hereby certify that the foregoing Copy of the Royal Warrant assigning Armorial Ensigns to the Province of Manitoba is faithfully extracted from the Records of the College of Arms, London. As witness my hand at the said College this twenty second day of June 1905.

A. S. SCOTT-GATTY

Garter

R.S.M., c. 42, Sch. A.

## SCHEDULE B



R.S.M., c. 42, Sch. B.



## ARMS AND FLORAL EMBLEM

## SCHEDULE C

No. 286/62.

Memorandum of an order of the Administrator in Council approved and ordered by His Honour the Administrator on Mar. 5, 1962.

The Honourable the Minister of Industry and Commerce having submitted to Council a report setting forth that:

WHEREAS Hugh Kirkwood Rankine of Winnipeg in Manitoba has designed the sett of a tartan described in Schedule A to this order, and has caused the design thereof to be registered in the Register of Industrial Designs under the Industrial Design and Union Label Act (Canada);

AND WHEREAS it is desirable that the tartan so designed (hereinafter called "the tartan") should be adopted and established as the official tartan of the Province of Manitoba and duly registered in the books of the Court of the Lord Lyon, King of Arms, in Scotland;

AND WHEREAS

- (a) a verbal description of the tartan is set out in Schedule A to this order;
- (b) a sample of the tartan made up in textile material is attached as Schedule

B to this order;

AND WHEREAS Her Majesty the Queen in right of the Province of Manitoba (represented therein by the Honourable E. Gurney V. Evans, Minister of Industry and Commerce), has entered into an agreement respecting the use of the tartan with Hugh Kirkwood Rankine aforesaid; and a copy of the agreement is set out in Schedule C to this order;

THEREFORE he, the Minister, recommends:

1. That, subject to certain limitations hereinafter set forth, and subject to the registration of this order in the books of the Court of the Lord Lyon, King of Arms, in Scotland, the Manitoba Tartan shall be of the colours and proportions verbally set out in Schedule A to this order, and as portrayed by the sample of textile material attached as Schedule B to this order.

2. That subject as stated in section 1, the design or sett of the tartan described and portrayed in Schedules A and B to this order is hereby adopted and established as the Manitoba Tartan.

## LIMITATIONS

3. The limitations hereinbefore mentioned are as follows:

(1) The Lieutenant Governor in Council of the Province of Manitoba in approving the tartan as the Manitoba Tartan contemplates its use

(a) in and by governmental units and personnel where no other tartan is applicable;

(b) by residents of Manitoba who have no hereditary or traditional claim to a specific tartan associated with their name or the place of their dwelling.

(2) That the existence and use in the foregoing circumstances of the tartan as the Manitoba Tartan is not intended to supersede the use of clan and family tartans by residents of the Province of Manitoba entitled thereto or in Regiments, Cadet Corps and other organizations including official organizations where a particular clan or family tartan has been, or may be, appointed for the use of such Regiment, Cadet Corps or organization. It is recognized that the use of clan and family tartans in the official life of the Province, with official and governmental sanction and approval, is an important and characteristic feature of Scottish-Celtic civilization and that anything in the nature of supersession of this by a universal or district tartan is un-Scottish and detrimental to the family or clan in its broad or legal sense as an important social institution linking great numbers of persons together and strengthening family life and the State.

(3) That with limited approval for certain purposes, where a tartan might not otherwise be convenient or available, the Manitoba Tartan will not in any way derogate from the present or future continuous usage and official recognition of, and allocation to, corps, bodies and organizations, official or unofficial, of clan or family tartans which may be appropriate thereto from traditional or actual connection with the founder or first head or other distinguished head or administrator who has any Scottish connection, and which are thus given a particularly human and tribal link for inspiration. The Manitoba Tartan will provide this link in those cases, and for those persons, to whom such a traditional link of tartan is not now available.

4. That as proper cognizance of the matters hereinbefore set out, and to give effect thereto, consent be given to the registration of this order in the books of the Court of the Lord Lyon, King of Arms, in Scotland, if and when this order, having been considered, is found reasonable and compatible with any other tartan previously recorded.

5. That the Honourable E. Gurney V. Evans, Minister of Industry and Commerce, is authorized to apply to the Lord Lyon, King of Arms, in Scotland, for registration of this order as mentioned in section 2.

6. That the agreement of which a copy is set out in Schedule C to this order is confirmed.

## ARMS AND FLORAL EMBLEM

7. Order in council 1121/61 approved on the 21st day of September, 1961, is revoked.

And, upon consideration of the said report and recommendation on the 5th day of March, A.D. 1962 (the Hon. Mr. Evans in the Chair), Council having advised that it be done as recommended by the Honourable the Minister of Industry and Commerce His Honour the Administrator in Council was pleased to approve the said report and recommendation and to order that it be done accordingly.

Certified correct

Clerk of the Executive Council.

CERTIFIED to be a true copy of a document signed by

DEREK BEDSON

as Clerk of the Executive Council

M

This memorandum is furnished on Mar. 6, 1962.

Schedule A to Order in Council 286/62

### Description of the Manitoba Tartan

The Manitoba Tartan consists of two blocks of colour, chiefly maroon and green, with some yellow, dark green and azure blue; and each of such two blocks consists of a total of one hundred threads.

The first block may be called the maroon block, and consists of twenty-eight threads disposed as follows:

Twelve maroon threads

Four yellow threads

Twelve maroon threads

The second block may be called the green block, and consists of seventy-two threads disposed as follows:

Two tartan green threads

Four dark green threads

Twenty-four tartan green threads

Two azure blue threads

Two tartan green threads

Four azure blue threads

Two tartan green threads

Two azure blue threads

Twenty-four tartan green threads

Four dark green threads

Two tartan green threads

The maroon block and the green block alternate across the entire width of the material and follow the same sequence in the length.

R.S.M., c. 42, Sch. C. En. S.M., 1962, c. 7, s. 4.



**AN ACT RESPECTING THE FLAG OF MANITOBA.**

R.S.M. 1970, c. F130

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

**Short title.**

- 1 This Act may be cited as: "The Provincial Flag Act".  
S.M., 1965, c. 28, s. 1.

**Flag adopted.**

- 2 The flag described and illustrated in the Schedule hereto is adopted as, and shall be, the flag of Manitoba.  
S.M., 1968, c. 28, s. 2.

**SCHEDULE****1. Description:**

A flag of the shade of red specified in the next following paragraph and the proportions two by length and one by width with the Union Jack occupying the upper quarter next the staff and with the shield of the armorial ensigns of the province centred in the half farthest from the staff.

British Admiralty Colour Code No. T1144 for nylon worsted bunting and No. T818A for other bunting.

**2. Illustration:**





NEW BRUNSWIC

# CONSTITUTIONS OF CANADA

Federal and Provincial

---

# LES CONSTITUTIONS DU CANADA

Fédérale et Provinciales

Edited and Annotated by  
CHRISTIAN L. WIKTOR  
&  
GUY TANGUAY

PROVINCES

*April 1981*

1981

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# NEW BRUNSWICK

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## INTRODUCTION



## INTRODUCTION



## NEW BRUNSWICK

### Introduction

New Brunswick was first settled by the French as early as 1604, when the Sieur de Monts and Samuel de Champlain established a little colony on St. Croix (Dorchester) Island, at the mouth of the St. Croix river in Passamaquoddy Bay (now in Maine). New Brunswick formed originally part of Nova Scotia or Acadie and thus followed the historical path of that region. It was ceded by France to England in 1713, by the Treaty of Utrecht, and France formally abandoned all her claims to Nova Scotia (Acadie) in 1763, by the Treaty of Paris. In 1784, after the American Revolution and the influx of a large number of Loyalists, New Brunswick was separated from Nova Scotia as the new province and was named after the House of Brunswick, ruling England at that time. The settlement of its boundary with the provinces of Quebec and Nova Scotia, and especially with the United States, the subject of a long diplomatic struggle, is mentioned in volume 1 of this collection, pp. C21, and C203.

The origin of the constitution of New Brunswick granted under royal prerogative is to be found in the commission of August 16, 1784, and the instructions issued to its first Governor, Thomas Carleton. The government then consisted of a Governor, an Executive Council, a Legislative Assembly and courts to administer justice. Responsible government was introduced to New Brunswick in 1848, following Nova Scotia. New Brunswick entered the Canadian Confederation in 1867, with its existing constitution, as one of the four original provinces. See British North America Act, 1867, preamble, sections 3, 5, 7, 64, 88, and subs., in volume 1 of this collection, pp. A12, and subs.

The province of New Brunswick, roughly square in shape, has a total area of 28,354 square miles (73,436 km<sup>2</sup>). It has a land boundary with the provinces of Quebec and Nova Scotia, and the state of Maine, and a coast line along Chaleur Bay, the Gulf of St.



Lawrence, the Northumberland Strait and the Bay of Fundy. New Brunswick has 677,250 inhabitants, of whom 33% claim French origin (1976 census). The capital is Fredericton, with a population of 45,248 (1976 census). The province is represented in the federal Parliament by 10 Senators appointed to the Senate, and 10 members elected to the House of Commons. Its provincial Legislative Assembly has 58 elected Members.

Subjects treated under this province follow the arrangement in the federal volumes 1 and 2, and are listed in the table of contents above. It should be mentioned that New Brunswick does not have legislation dealing with native rights.

#### Selected references:

#### Constitutional history:

Bell, D.G., "The Reception Question and the Constitutional crisis of the 1790's in New Brunswick," (1980), 29 University of New Brunswick Law Journal 157-172.

Kerr, D.G.G., "Head and Responsible Government in New Brunswick," (1938), Canadian Historical Association, Historical Papers 62-70.

MacNutt, W.S., "The Coming of Responsible Government to New Brunswick," (1952), 33 Canadian Historical Review 111-128.

Read, John E., "The Early Provincial Constitutions," (1948), 26 Canadian Bar Review 621-637.

Wilson, George E., "New Brunswick's Entrance into Confederation," (1928), 9 Canadian Historical Review 4-24.

#### General studies:

Thornburn, Hugh G., Politics in New Brunswick, Toronto, University of Toronto Press, 1961, vi, 217 p. (Canadian Government Series, No. 10)

Bellamy, David J., and others, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, vi, 394 p.

Robin, Martin, Canadian Provincial Politics: The Party Systems of the Ten Provinces, 2d ed., Scarborough, Prentice-Hall of Canada, 1978, 316 p.

Reference works:

The Atlantic Year Book and Almanac 1977/78, Fredericton, Brunswick Press, 1977, pp. 77-166.

Encyclopedia Canadiana, Toronto, Grolier of Canada, c1975, vol. 7, pp. 269-294.

Province of New Brunswick Telephone Directory/Province du Nouveau-Brunswick Annuaire Téléphonique 1980, Fredericton, 1980, 123, 123 p.

Canada Year Book 1978/79, Ottawa, Supply and Services Canada, 1978, x, 977 p.

The 1980 Corpus Almanac of Canada, Don Mills, 1980, various paging.

1980 Canadian Almanac & Directory, Toronto, Copp Clark Pitman, 1980, 1024 p.

NOUVEAU-BRUNSWICKIntroduction

Ce sont les Français qui s'installèrent les premiers au Nouveau-Brunswick, lorsque Pierre de Monts et Samuel de Champlain établirent en 1604, une petite colonie sur l'île Sainte-Croix (Dorchester) à l'embouchure de la rivière Sainte-Croix dans la baie Passamaquoddy, aujourd'hui partie de l'état du Maine (Etats-Unis). A l'origine, le Nouveau-Brunswick faisait partie intégrante de la Nouvelle-Ecosse ou Acadie; son histoire se confond donc avec celle de cette dernière région. Par le traité d'Utrecht de 1713, la France céda à l'Angleterre une partie importante de la Nouvelle-Ecosse (Acadie), y compris le Nouveau-Brunswick. Mais ce n'est qu'en 1763, par le traité de Paris, qu'elle abandonna formellement tous ses droits sur l'Acadie. Le Nouveau-Brunswick fut séparé de la Nouvelle-Ecosse en 1784 par suite de l'arrivée de nombreux loyalistes qui avaient quitté les Etats-Unis à la fin de la révolution américaine. Cette province fut nommée en l'honneur de la maison de Brunswick qui régnait alors sur l'Angleterre. La délimitation de ses frontières, dont il est question aux pages C21 et C203 et suivantes du volume 1 de cette collection, a fait l'objet d'une longue lutte diplomatique impliquant les provinces de Québec et de la Nouvelle-Ecosse et, surtout, les Etats-Unis.

La constitution du Nouveau-Brunswick, octroyée par prérogative royale, tire son origine de la commission du 16 août 1784 et des instructions données à son premier gouverneur, Thomas Carleton. Le gouvernement se composait alors d'un gouverneur, d'un conseil exécutif, d'une assemblée législative et de tribunaux judiciaires. Le gouvernement responsable fut instauré au Nouveau-Brunswick en 1848. Le Nouveau-Brunswick est l'une des quatre provinces fondatrices de l'union fédérale de 1867; elle conserva d'ailleurs la constitution qu'elle avait à cette époque. A cet égard, il y a lieu de consulter le préambule et les art. 3, 5, 7, 64, 88 et suivants de l'A.A.N.B., 1867 déjà reproduit aux pp. A13 et suivantes du volume 1 de la présente collection.

Le territoire du Nouveau-Brunswick, de forme plutôt carrée, a une superficie totale de 28,354 milles carrés (73,436 kilomètres carrés). Du nord-ouest au sud-ouest en passant successivement par le nord, l'est et le sud, il est délimité par la



province de Québec, la baie des Chaleurs, le golfe Saint-Laurent, le détroit de Northumberland, la province de la Nouvelle-Ecosse, la baie de Fundy et l'état du Maine. Le Nouveau-Brunswick a une population de 677,250 habitants (recensement 1976), dont 33% sont d'origine française. Sa capitale est Fredericton. Au Parlement fédéral, la province est représentée par 10 sénateurs à la Chambre haute et par 10 députés à la Chambre des communes. De son côté, l'Assemblée législative provinciale se compose de 58 membres élus.

Les sujets traités dans le présent chapitre sont classés suivant le plan retenu dans les volumes 1 et 2 sur la constitution fédérale et sont énumérés dans la table des matières qui précède.

### Sources choisies

#### Histoire constitutionnelle:

Bell, D.G., "The Reception Question and the Constitutional crisis of the 1790's in New Brunswick", (1980) 29 University of New Brunswick Law Journal, pp. 157-172.

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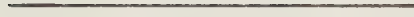
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GENERAL CONSTITUTIONAL ACTS



LOIS CONSTITUTIONNELLES GÉNÉRALES





## GENERAL CONSTITUTIONAL ACTS

### Introduction

The general constitutional acts applicable to New Brunswick are as follows:

1. British North America Act, 1867, as amended.

Note: Sections 3, 5, 7, 22, 37, 64, 68 and 88 of this imperial statute, reproduced in volume 1 of this collection, pp. A10, and subs., affect specifically New Brunswick.

2. Federal Courts Jurisdiction Act, R.S.N.B. 1973, c. F-8, as amended.

Note: This provincial statute, reproduced below, deals with the jurisdiction of the Supreme Court and the Federal Court of Canada concerning controversies between the province of New Brunswick and Canada or any other province, as well as questions of the validity of federal or provincial statutes.

3. Judicature Act, R.S.N.B. 1973, c. J-2, as amended.

Note: Section 23 of this provincial statute, reproduced below under "Judicial Power," provides that the Lieutenant Governor in Council may refer any constitutional or other questions to the Court of Appeal of New Brunswick.

## LOIS CONSTITUTIONNELLES GÉNÉRALES

### Introduction

Les lois constitutionnelles générales applicables au Nouveau-Brunswick sont les suivantes:

1. A.A.N.B., 1867 et ses modifications

Les art. 3, 5, 7, 22, 37, 64, 68 et 88 de cette loi impériale, reproduite aux pages A13 et suivantes du volume 1 de cette collection, intéressent plus particulièrement le Nouveau-Brunswick.

2. Loi sur la compétence des tribunaux fédéraux, L.R.N.-B. 1973, c. F-8 et ses modifications

Cette loi provinciale, reproduite ci-après, confirme la compétence de la Cour suprême du Canada et de la Cour fédérale du Canada dans tout litige entre le Nouveau-Brunswick et l'état fédéral ou toute autre province, de même que sur toute question relative à la validité d'une loi du Parlement du Canada ou de la législature du Nouveau-Brunswick.

3. Loi sur l'organisation judiciaire, L.R.N.-B. 1973, c. J-2 et ses modifications

L'art. 23 de cette loi provinciale, reproduite plus loin au chapitre "Pouvoir judiciaire" du présent fascicule, autorise le lieutenant-gouverneur en conseil à référer toute question, constitutionnelle ou autre, à la considération de la Cour d'appel du Nouveau-Brunswick.



## Federal Courts Jurisdiction Act

R.S.N.B. 1973, c. F-8

with amendments to date, including  
1979, c.41, s.51

## Loi sur la compétence des tribunaux fédéraux

L.R.N.-B. 1973, c. F-8

et ses modifications à jour, y inclus  
1979, c.41, art.51

**1** The Supreme Court of Canada, and the Federal Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the Acts of the Parliament of Canada, known as the *Supreme Court Act* and the *Federal Court Act*, have jurisdiction in the following cases:

- (a) controversies between Canada and the Province;
- (b) controversies between the Province and any other Province of Canada that may have passed, or may hereafter pass, an Act similar to this;
- (c) suits, actions, or proceedings, in which the parties thereto by their pleadings raise the question of the validity of an Act of the Parliament of Canada, or of an Act of the Legislature of the Province, and when in the opinion of the Court of Queen's Bench of New Brunswick such question is material, in which case the said Court of Queen's Bench of New Brunswick shall at the request of the parties, and may without such request, order the case to be

**1** Conformément aux dispositions des lois du Parlement du Canada, à savoir la *Loi sur la Cour suprême* et la *Loi sur la Cour fédérale*, la Cour suprême du Canada et la Cour fédérale du Canada ou la Cour suprême du Canada seule ont compétence

- a) dans les litiges survenant entre le Canada et la province du Nouveau-Brunswick;
- b) dans les litiges survenant entre la province du Nouveau-Brunswick et toute autre province du Canada qui a adopté ou peut adopter ultérieurement une loi semblable à celle-ci;
- c) dans les poursuites, actions ou procédures dans lesquelles les parties ont soulevé, par leurs plaidoiries, la question de la validité d'une loi du Parlement du Canada ou d'une loi de la Législature de la province du Nouveau-Brunswick et lorsque la Cour du Banc de la Reine du Nouveau-Brunswick estime qu'il s'agit d'une question essentielle, auquel cas elle doit, à la demande des parties, et peut, en l'absence de cette demande, ordonner le renvoi de la cause devant

*Loi sur la compétence des tribunaux fédéraux*

removed to the Supreme Court of Canada in order that the question may be decided. R.S., c.83, s.1; 1979, c.41, s.51(1).

la Cour suprême du Canada pour qu'il soit statué sur la question. S.R., c.83, art.1; 1979, c.41, art.51(1).

2 In case sittings of the Federal Court of Canada are appointed to be held in any city, town or place in which a court house is situated, the judge presiding at any such sittings has in all respects the same authority as a judge of The Court of Queen's Bench of New Brunswick, in regard to the use of the court house and other buildings or apartments set apart in the judicial district for the administration of justice; but nothing in this section shall be construed to deprive The Court of Queen's Bench of New Brunswick, or any of the judges thereof, of the use and authority that the Supreme Court of New Brunswick, and the judges thereof, have heretofore had and exercised of and over the court house and other buildings mentioned herein, while sitting. 1979, c.41, s.51(2).

2 Dans le cas où la Cour fédérale du Canada est appelée à siéger dans une cité, une ville ou un endroit où se trouve un palais de justice, le juge qui préside les séances dispose, à tous égards, des mêmes pouvoirs que possède un juge de la Cour du Banc de la Reine du Nouveau-Brunswick en ce qui a trait à l'usage du palais de justice et des autres bâtiments ou locaux de la circonscription judiciaire réservés à l'administration de la justice; mais rien dans le présent article ne doit s'interpréter comme privant la Cour du Banc de la Reine du Nouveau-Brunswick ou l'un de ses juges, de l'usage que la Cour suprême du Nouveau-Brunswick et ses juges faisaient, avant l'adoption de la présente loi, du palais de justice et des autres bâtiments mentionnés dans la présente loi pendant leurs sessions, comme privant cette cour ou les juges qui la composent des pouvoirs qu'ils exerçaient à cet égard. 1979, c.41, art.51(2).

INTERGOVERNMENTAL RELATIONS



RELATIONS INTERGOUVERNEMENTALES





## INTERGOVERNMENTAL RELATIONS

### Introduction

While the province of New Brunswick has not conferred the responsibility for its intergovernmental relations to any special department, it conducts extensive relations on the federal-provincial as well as interprovincial level. This is reflected in statutes which authorize various departments to enter into agreements with the federal government and occasionally provincial governments in a number of important subjects such as agriculture, education, social security, environmental protection, fisheries, and others.

With the federal government the province deals on such important matters as natural resources and fiscal relations. While the natural resources on land belong to the province pursuant to section 109 of the British North America Act, the jurisdiction over offshore mineral resources is currently the subject of discussion with the federal government. Federal-provincial fiscal relations were discussed in volume 2 of this collection, pp D167, and subs.

On the interprovincial level New Brunswick has especially close relations with the other provinces of the maritime region. For instance, in order to promote unity and cooperation among the three maritime provinces in a number of areas of mutual interest, New Brunswick, Nova Scotia and Prince Edward Island established in 1971 the Council of Maritime Premiers and all three provinces have passed an identical Council of Maritime Premiers Act (R.S.N.B. 1973, c. C-29; S.N.S. 1972, c. 7; and R.S.P.E.I. 1974, c. C-24). The text of the New Brunswick statute is reproduced below. The Council has a small Secretariat located at Halifax, Nova Scotia. See also the Maritime Provinces Higher Education Commission Act (R.S.N.B. 1973, c. M-2; S.N.S. 1973, c. 10; and R.S.P.E.I. 1974, c. M-2).

Selected References:

General studies:

- Leach, Richard H., "Interprovincial Co-ordination," in Bellamy, David J., and others, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 381-394.
- McKenna, Frank J. "New Brunswick and Offshore Mineral Rights," (1973), 22 University of New Brunswick Law Journal 69-88.

On the Maritime Union:

- Campbell, Alexander B.; Regan, Gerald A.; and Hatfield, Richard B., "The Move Toward Maritime Integration and the Role of the Council of Maritime Premiers," (1972), 15 Canadian Public Administration 591-609.
- Note: Followed by a French version under title: "Le mouvement vers l'intégration des provinces Maritimes et le rôle du Conseil des Premiers Ministres des Maritimes." (pp. 610-630).
- Fergusson, C. Bruce. "Maritime Union." (1970), 77 Queen's Quarterly 167-179.
- Forbes, Ernest R., The Maritime Rights Movement, 1919-1927: A Study in Canadian Regionalism, Montreal, McGill-Queen's University Press, 1979, x, 246 p.
- Maritime Union Study, Interprovincial Relations in the Maritime Provinces, by the Dalhousie University Institute of Public Affairs, and Richard H. Leach, Fredericton, 1970, vii, 103 p.



## RELATIONS INTERGOUVERNEMENTALES

### Introduction

Bien que le Nouveau-Brunswick n'ait pas confié la responsabilité de ses affaires intergouvernementales à un ministère particulier, cette province entretient néanmoins de nombreuses relations au plan fédéral-provincial et au niveau interprovincial. C'est ainsi que le législateur du Nouveau-Brunswick autorise divers ministres du cabinet à conclure des accords avec le gouvernement canadien et, à l'occasion, avec les autres gouvernements provinciaux dans des domaines telles l'agriculture, l'éducation, la sécurité sociale, la protection de l'environnement et les pêcheries.

Dans ses relations avec l'état fédéral, cette province traite de questions aussi importantes que les ressources naturelles et les relations fiscales qui sont débattues. Ainsi, alors même que l'art. 109 de l'A.A.N.B. consacre le droit de propriété de la province sur les ressources naturelles sises sur son territoire, la question de la compétence sur les richesses minières du sous-sol marin continue d'alimenter le débat avec le gouvernement fédéral. Quant au domaine des relations fiscales fédérales-provinciales, il est couvert aux pages D169 et suivantes du volume 2 de cette collection.

Dans le cadre de ces relations interprovinciales, c'est surtout avec les autres provinces maritimes que ses rapports ont été les plus suivis. Ainsi, dans le but de promouvoir l'unité et la coopération entre elles dans un certain nombre de domaines d'intérêt mutuel, la législature de chacune des trois provinces maritimes suivantes, soit le Nouveau-Brunswick, la Nouvelle-Ecosse et l'Ile du Prince-Edouard, a adopté la Loi sur le Conseil des Premiers ministres des Maritimes (L.R.N.-B. 1973, c. C-29, S.N.S. 1972, c. 7 et R.S.P.E.I. 1974, c. C-24 respectivement), dont le texte tiré des recueils législatifs du Nouveau-Brunswick est reproduit ci-après, ainsi que la Loi sur la Commission de l'enseignement supérieur des provinces maritimes (L.R.N.-B. 1973, c. M-2, S.N.S. 1973, c. 10 et R.S.P.E.I. 1974, c. M-2 respectivement), cette dernière loi n'étant cependant pas reproduite. Le Conseil des Premiers ministres des Maritimes a un secrétariat situé à Halifax (Nouvelle-Ecosse).

Sources choisies

Etudes générales:

Leach, Richard H., "Interprovincial Co-ordination", dans David J. Bellamy et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, pp. 381-394.

McKenna, Frank J., "New Brunswick and Offshore Mineral Rights", (1973) 22 University of New Brunswick Law Journal, pp. 69-88.

Union maritime:

Campbell, Alexander B. et al, "The Move Toward Maritime Integration and the Role of the Council of Maritime Premiers", (1972) 15 Canadian Public Administration, pp. 591-609.

Note: Cet article est suivi d'une version française intitulée "Le mouvement vers l'intégration des provinces maritimes et le rôle du Conseil des Premiers Ministres des Maritimes", pp. 610-630.

Fergusson, C. Bruce, "Maritime Union", (1970) 77 Queen's Quarterly, pp. 167-179.

Forbes, Ernest R., The Maritime Rights Movement, 1919-1927: a Study in Canadian Regionalism, Montreal, McGill-Queen's University Press, 1979, 246 p.

Maritime Union Study, Interprovincial Relations in the Maritime Provinces, Dalhousie University Institute of Public Affairs et Richard H. Leach, Fredericton, 1970, 103 p.

## Council of Maritime Premiers Act

R.S.N.B. 1973, c. C-29

## Loi sur le Conseil des Premiers ministres des Maritimes

L.R.N. - B. 1973, c. C-29

WHEREAS the Provinces of New Brunswick, Nova Scotia and Prince Edward Island are unanimous in their desire to promote unity of purpose among their respective Governments; and

WHEREAS they wish to ensure maximum coordination of the activities of the Governments of the three Provinces and their agencies; and

WHEREAS the said Provinces wish to establish the framework for joint action and undertakings; and

WHEREAS the Maritime Union Study recommended the establishment of a Council of Maritime Premiers as one of the agencies for cooperative action among the said Provinces; and

WHEREAS by an Agreement dated the twenty-fifth day of May, 1971, the Premiers of the said Provinces agreed to general principles for the operation of a Council of Maritime Premiers for the purpose of pursuing the objectives herein recited; and

WHEREAS the said Premiers have met several times for such purpose; and

WHEREAS it is desirable to enact legislation in each of the said Provinces respecting a Council of Maritime Premiers;

THEREFORE Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

CONSIDÉRANT que les provinces du Nouveau-Brunswick, de la Nouvelle-Écosse et de l'Île-du-Prince-Édouard ont exprimé à l'unanimité le désir d'encourager la poursuite d'objectifs communs par leurs gouvernements respectifs;

CONSIDÉRANT qu'elles désirent assurer la plus grande coordination entre les activités des Gouvernements des trois provinces et de leurs organismes;

CONSIDÉRANT que lesdites provinces désirent établir un cadre d'actions et d'initiatives communes;

CONSIDÉRANT que l'Étude sur l'union des provinces Maritimes a recommandé d'instituer un Conseil des Premiers ministres des Maritimes comme l'un des organismes poursuivant une action collective entre lesdites provinces;

CONSIDÉRANT que les Premiers ministres desdites provinces ont donné leur adhésion, par un accord en date du 25 mai 1971, à des principes généraux quant au fonctionnement du Conseil des Premiers ministres des Maritimes en vue de poursuivre les objectifs mentionnés dans la présente loi;

CONSIDÉRANT que lesdits Premiers ministres se sont rencontrés à plusieurs occasions à cette fin;

ET CONSIDÉRANT qu'il est souhaitable que chacune desdites provinces adopte une loi à propos du Conseil des Premiers ministres des Maritimes;

PAR CONSÉQUENT, Sa Majesté, sur l'avis et du consentement de l'Assemblée législative du Nouveau-Brunswick, décrète:



*Loi sur le Conseil des Premiers ministres des Maritimes*

**1** In this Act

“Agreement” means an agreement among the Provinces of New Brunswick, Nova Scotia and Prince Edward Island referred to in section 2;

“Council” means the Council of Maritime Premiers established pursuant to this Act;

“parties” means Her Majesty the Queen in right of each of the Provinces of New Brunswick, Nova Scotia and Prince Edward Island represented by her respective Lieutenant-Governors in Council. 1972, c.10, s.1.

**2** The Lieutenant-Governor in Council may

(a) enter into an Agreement with the Provinces of Nova Scotia and Prince Edward Island for the establishment of a Council of Maritime Premiers comprised of the Premiers of the Provinces of New Brunswick, Nova Scotia and Prince Edward Island; and

(b) agree with the Provinces of Nova Scotia and Prince Edward Island to amend the Agreement. 1972, c.10, s.2.

**3** The Agreement may

(a) authorize the Council to do or cause to be done, on behalf of the parties, any or all such things as the parties thereto are otherwise empowered to do and deem necessary for or ancillary to the attainment of the objectives set forth in the preamble to this Act;

(b) provide for the financing of the operations of the Council and for cost-sharing arrangements; and

(c) contain such other provision as may be necessary or desirable to provide for the administration of the Council and for its operations. 1972, c.10, s.3.

**4** The fiscal year of the Council commences on the first day of April in each year and ends on the thirty-first day of March in the year next following. 1972, c.10, s.4.

**1** Dans la présente loi

«accord» désigne un accord entre les provinces du Nouveau-Brunswick, de la Nouvelle-Écosse et de l'Île-du-Prince-Édouard, visé à l'article 2;

«Conseil» désigne le Conseil des Premiers ministres des Maritimes créé conformément à la présente loi;

«parties» désigne Sa Majesté la Reine du chef de chacune des provinces du Nouveau-Brunswick, de la Nouvelle-Écosse et de l'Île-du-Prince-Édouard représentées par leurs lieutenants-gouverneurs en conseil respectifs. 1972, c.10, art.1.

**2** Le lieutenant-gouverneur en conseil peut

a) conclure un accord avec les provinces de la Nouvelle-Écosse et de l'Île-du-Prince-Édouard en vue d'instituer un conseil des Premiers ministres des Maritimes, composé des Premiers ministres des provinces du Nouveau-Brunswick, de la Nouvelle-Écosse et de l'Île-du-Prince-Édouard; et

b) convenir avec les provinces de la Nouvelle-Écosse et de l'Île-du-Prince-Édouard de modifier l'accord. 1972, c.10, art.2.

**3** L'accord peut

a) autoriser le Conseil à accomplir ou à faire accomplir, au nom des parties tout ou partie de ce que les parties à l'accord ont par ailleurs le pouvoir d'accomplir et estiment nécessaire ou utile pour atteindre les objectifs énoncés dans le préambule de la présente loi;

b) prévoir le financement des activités du Conseil et le système de répartition des frais; et

c) contenir telles autres dispositions qui peuvent être nécessaires ou souhaitables pour le fonctionnement du conseil et ses activités. 1972, c.10, art.3.

**4** L'année financière du Conseil commence le 1<sup>er</sup> avril de chaque année et se termine le 31 mars de l'année suivante. 1972, c.10, art.4.

*Council of Maritime Premiers Act*

**5** The Council shall prepare an annual budget that shall be submitted to the Lieutenant-Governor in Council. 1972, c.10, s.5.

**6** If the budget is approved by the Lieutenant-Governors in Council in the Provinces of New Brunswick, Nova Scotia and Prince Edward Island, there shall be introduced in the Legislature a resolution for an appropriation to enable the Province to meet its share of the budget. 1972, c.10, s.6.

**7** Each year the Council shall prepare and publish a report on its activities in the preceding year. 1972, c.10, s.7.

**8** Any Agreement or any amendment thereto made under this Act when the Legislature is in session shall be tabled during that session or, if it is not in session, shall be tabled at the next following session. 1972, c.10, s.8.

**9** The Agreement dated the twenty-fifth day of May, 1971 shall be deemed to be an Agreement under this Act. 1972, c.10, s.9.

**5** Le Conseil doit établir un budget annuel qui doit être soumis au lieutenant-gouverneur en conseil. 1972, c.10, art.5.

**6** Si le budget reçoit l'approbation des lieutenants-gouverneurs en conseil des provinces du Nouveau-Brunswick, de la Nouvelle-Écosse et de l'Île-du-Prince-Édouard, la Législature sera saisie d'une résolution portant affectation d'un crédit destiné à permettre à la province de prendre en charge la part du budget qui lui incombe. 1972, c.10, art.6.

**7** Chaque année le conseil doit établir et publier un rapport sur ses activités au cours de l'année précédente. 1972, c.10, art.7.

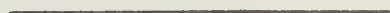
**8** Tout accord conclu ou toute modification apportée à un accord en application de la présente loi doit, lorsque la Législature siège, être déposé au cours de cette session ou, si elle ne siège pas, au cours de la session suivante. 1972, c.10, art.8.

**9** L'accord en date du 25 mai 1971 est réputé être un accord conclu en application de la présente loi. 1972, c.10, art.9.





EXECUTIVE POWER



POUVOIR EXÉCUTIF



## EXECUTIVE POWER

### Introduction

The executive power in New Brunswick derives its statutory authority from the British North America Act, sections 58 to 62, 64, 66 and 67, reproduced in volume 1 of this collection, pp. A13 and subs., and from two provincial statutes reproduced below: 1) the Executive Council Act, R.S.N.B. 1973, c. E-12, as amended, and 2) the Great Seal Act, R.S.N.B., 1973, c. G-6.

According to these statutory provisions and constitutional conventions, the executive power in New Brunswick is vested in the Lieutenant Governor advised by the Executive Council. The Lieutenant Governor is the representative of the Sovereign in right of the province, and is appointed by the Governor General in Council for a period of five years. The executive branch of the government, the Executive Council, also known as the Cabinet, consists of the Ministers of the Crown, headed by the Premier (First Minister) of the province, who is the leader of the political party having the confidence of the Legislative Assembly. Ministers are appointed by the Lieutenant Governor on the advice of the Premier. The functions and powers of the Executive are similar to those of the components of the federal executive power as described in volume 2 of this collection, Chapter E. The general observations contained in the introduction (pp. E5 and E6), and in sections on the Governor General (p. E23), the Lieutenant Governor (p. E39), and the Cabinet (pp. E47 and E48) apply mutatis mutandis to this chapter as well. In effect it is the Premier and his Cabinet who, according to constitutional conventions, exercise the executive power while the Lieutenant Governor remains the nominal head of the provincial executive.

New Brunswick does not have general or individual statutes regulating the organization of the Executive, which would describe the powers and duties of its various departments. The ministers are appointed by the Lieutenant Governor in pursuance of section 2



of the Executive Council Act cited above, which lists the ministers who may be appointed. Section 3 further provides that the Lieutenant Governor in Council may by order in council prescribe the duties of the ministers and their departments. Existing departments can be located in the Province of New Brunswick Telephone Directory, and the Corpus Administrative Index. Finally, it should be mentioned that government departments and agencies are submitted to the scrutiny of the Ombudsman as defined in the Ombudsman Act, R.S.N.B. 1973, c. O-5, as amended.

Selected references:

Bellamy, David J., and others, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 297-368 (see especially Chapter 20. The Lieutenant-Governors, by John T. Saywell, and Chapter 21. Cabinets, by Kenneth Bryden).

## POUVOIR EXÉCUTIF

### Introduction

Au Nouveau-Brunswick, le pouvoir exécutif trouve son fondement législatif dans l'A.A.N.B., art. 58 à 62, 64, 66 et 67, et dans deux lois provinciales intitulées Loi sur le Conseil exécutif (L.R.N.-B. 1973, c. E-12 et ses modifications) et Loi sur le grand sceau (L.R.N.-B. 1973, c. G-6). Ces deux dernières lois sont reproduites ci-après, alors que l'A.A.N.B. est déjà rapporté aux pages A13 et suivantes du volume 1 de cette collection.

Conformément à cette législation et à la pratique constitutionnelle, le pouvoir exécutif de cette province est dévolu au lieutenant-gouverneur assisté d'un conseil exécutif. Le lieutenant-gouverneur est le représentant de la Reine dans la province. Il est nommé par le gouverneur général en conseil pour une période de cinq ans. Quant au conseil exécutif, connu également sous le nom de cabinet, il se compose des ministres de la Couronne sous la direction du premier ministre de la province; d'après l'usage, c'est le chef du parti politique majoritairement élu à l'Assemblée législative qui remplit le poste de premier ministre. Quant aux divers ministres, ils sont nommés par le lieutenant-gouverneur sur l'avis du premier ministre provincial. Le pouvoir exécutif provincial exerce sensiblement les mêmes fonctions que celles des diverses composantes du pouvoir exécutif fédéral dont il est question au chapitre E du volume 2 de la présente collection. Les observations qui sont faites dans l'introduction de ce chapitre (pp. E7 et E8), ainsi que dans les paragraphes sur le gouverneur général (p. E25), sur le lieutenant-gouverneur (pp. E40 et suivantes) et sur le cabinet des ministres (pp. E49 et E50), s'appliquent mutatis mutandis au présent chapitre. En réalité, comme le veut la pratique constitutionnelle, c'est le premier ministre et son cabinet qui exercent le pouvoir exécutif, tandis que le lieutenant-gouverneur demeure le chef nominal de l'exécutif provincial.

Le Nouveau-Brunswick n'a aucune loi générale ou particulière qui décrive l'organisation du pouvoir exécutif ou définisse les fonctions, pouvoirs et devoirs des ministres nommés par le lieutenant-gouverneur sous l'autorité de l'art. 2 de la Loi sur le Conseil exécutif déjà cité. Cet art. 2 fait

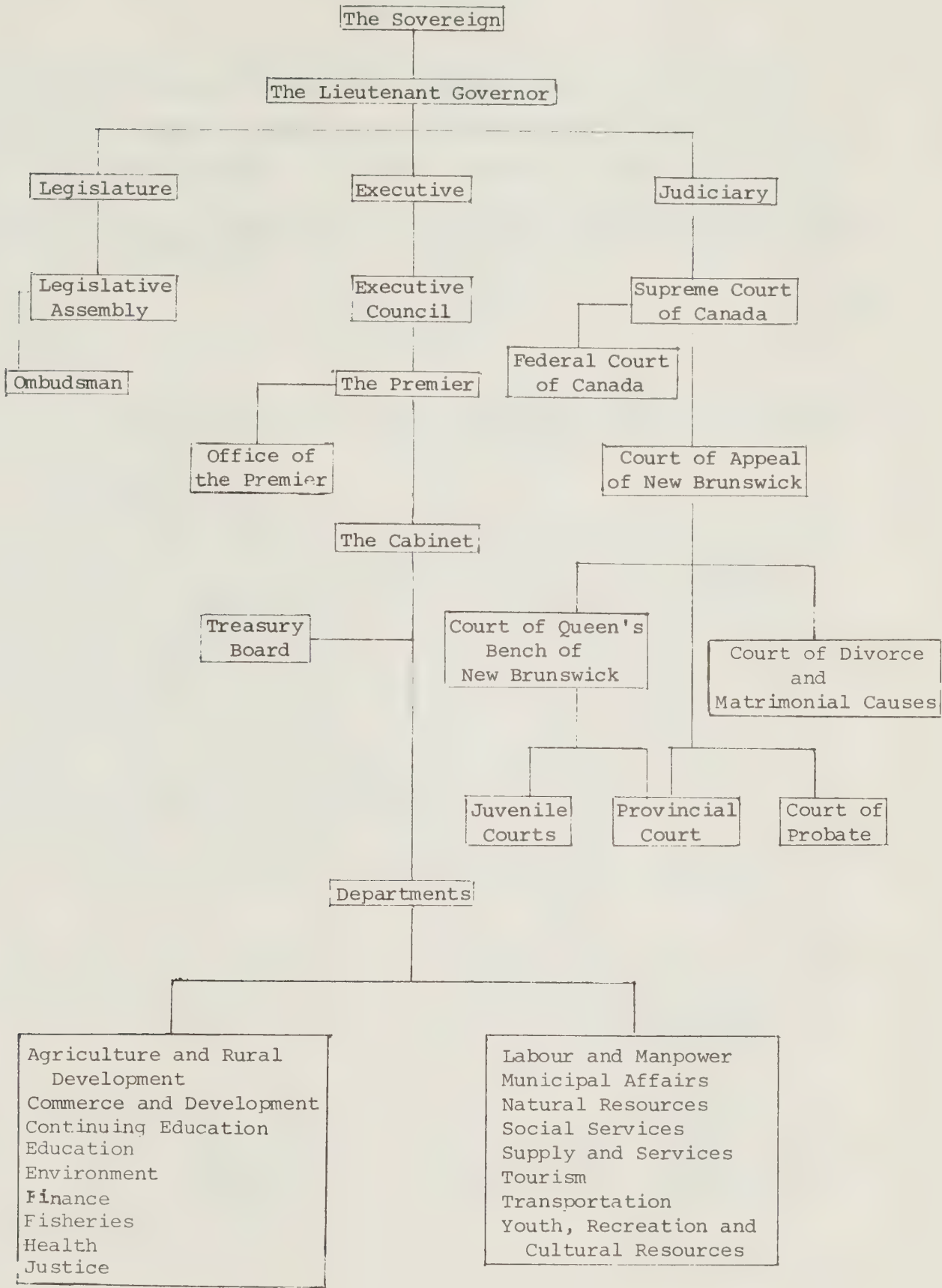
mention des divers ministères qui peuvent être créés, alors que l'art. 3 de cette même loi stipule notamment que c'est par décret que le lieutenant-gouverneur en conseil peut prescrire les fonctions des ministères établis. Ceux-ci sont soumis au pouvoir d'enquête de l'ombudsman tel que défini dans la Loi sur l'Ombudsman, (L.R.N.-B. 1973, c. 0-5 et ses modifications), non reproduite ici. Pour localiser les ministères existants, on peut consulter l'Annuaire téléphonique publié par le gouvernement provincial ou le service de mises à jour intitulé Corpus Administrative Index.

Source choisie

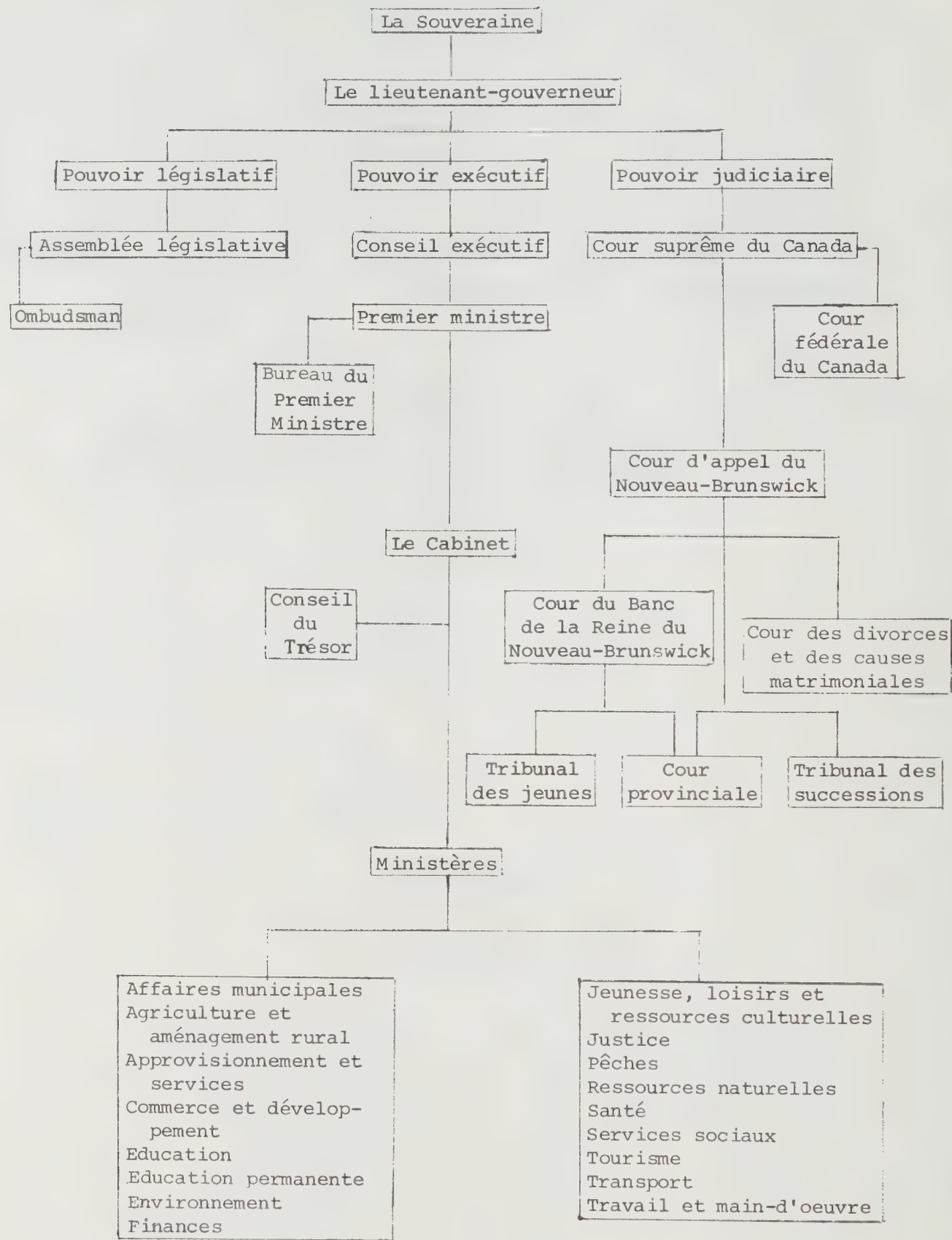
Bellamy, David J. et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, 394 p.  
Consulter les pp. 297-322: The Lieutenant Governors; Cabinets.



The Government of New Brunswick



Le gouvernement du Nouveau-Brunswick



## Executive Council Act

R.S.N.B. 1973, c. E-12

with amendments to date, including  
1980, c.20

## Loi sur le Conseil exécutif

L.R.N.-B. 1973, c. E-12

et ses modifications à jour, y inclus  
1980, c.20

1 The Executive Council shall be composed of such persons as the Lieutenant-Governor from time to time thinks fit. R.S., c.75, s.1.

2 The Lieutenant-Governor may appoint, under the Great Seal of the Province, from among the members of the Executive Council the following Ministers who shall hold office during pleasure: an Attorney General who shall also be Minister of Justice, a Minister of Finance, a Chairman of the Treasury Board, a Minister of Supply and Services, a Minister of Transportation, a Minister of Natural Resources, a Minister of Agriculture and Rural Development, a Minister of Health, a Minister of Social Services, a Minister of Labour and Manpower, a Minister of Education, a Minister of Continuing Education, a Minister of Municipal Affairs, a Minister of Commerce and Development, a Minister of Fisheries, a Minister of the Environment, a Minister of Youth, Recreation and Cultural Resources and a Minister of Tourism. R.S., c.75, s.2; 1954, c.39, s.1; 1960-61, c.40, s.1; 1961-62, c.19, s.1; 1963(2nd Sess.), c.20, s.1; 1966, c.53, s.1; 1967, c.38, s.1; 1968, c.27, s.1; 1971, c.31, s.1; 1972, c.28, s.1, 2; 1975, c.20, s.1; 1975, c.77, s.1; 1976, c.22, s.1; 1978, c.D-11.2, s.19; 1979, c.19, s.1; 1980, c.20, s.1.

3(1) The Lieutenant-Governor in Council may by Order in Council, from time to time, prescribe the duties of the Ministers and of the several departments over which they preside, and of the officers and clerks thereof.

1 Le Conseil exécutif se compose des personnes que le Lieutenant-gouverneur juge à propos de nommer à l'occasion. S.R., c.75, art.1.

2 Le Lieutenant-gouverneur peut nommer parmi les membres du Conseil exécutif, sous le grand sceau de la province, les ministres suivants, qui exercent leurs fonctions à titre amovible: un procureur général qui est également ministre de la Justice, un ministre des Finances, un président du conseil du Trésor, un ministre de l'Approvisionnement et des Services, un ministre du Transport, un ministre des Ressources naturelles, un ministre de l'Agriculture et de l'Aménagement rural, un ministre de la Santé, un ministre des Services sociaux, un ministre du Travail et de la Main-d'œuvre, un ministre de l'Éducation, un ministre de l'Éducation permanente, un ministre des Affaires municipales, un ministre du Commerce et du Développement, un ministre des Pêches, un ministre de l'Environnement, un ministre de la Jeunesse, des Loisirs et des Ressources culturelles et un ministre du Tourisme.

S.R., c.75, art.2; 1954, c.39, art.1; 1960-61, c.40, art.1; 1961-62, c.19, art.1; 1963(2<sup>e</sup> sess.), c.20, art.1; 1966, c.53, art.1; 1967, c.38, art.1; 1968, c.27, art.1; 1971, c.31, art.1; 1972, c.28, art.1, 2; 1975, c.20, art.1; 1975, c.77, art.1; 1976, c.22, art.1; 1978, c.D-11.2, art.19; 1979, c.19, art.1; 1980, c.20, art.1.

3(1) Le lieutenant-gouverneur en conseil peut à l'occasion prescrire par décret en conseil les fonctions des ministres et celles des divers ministères qui relèvent d'eux, ainsi que celles des fonctionnaires et employés de ces ministères.



*Loi sur le Conseil exécutif*

3(2) Any right, power, duty, function, responsibility or authority vested in or imposed on any Minister before or after the coming into force of this subsection by or under any Act of the Legislature or of the Parliament of Canada may be transferred to, vested in, or imposed on such other member of the Executive Council as the Lieutenant-Governor in Council designates, and when such designation is made, it is deemed to have been made on such date as is fixed by the Lieutenant-Governor in Council.

3(3) The Lieutenant-Governor in Council may transfer the administration and control of property held by a member of the Executive Council in the name of Her Majesty in right of the Province

(a) to such other member of the Executive Council as the Lieutenant-Governor in Council designates, or

(b) to Her Majesty in right of Canada,

subject to such terms and conditions as the Lieutenant-Governor in Council may prescribe. R.S., c.75, s.3; 1961-62, c.19, s.2; 1964, c.28, s.1; 1966, c.53, s.2; 1967, c.38, s.2; 1968, c.27, s.2; 1971, c.31, s.2; 1972, c.28, s.3,4; 1979, c.19, s.2.

3(4) The Lieutenant-Governor in Council may accept the transfer of the administration and control of property from Her Majesty in right of Canada, and may designate a member of the Executive Council to hold the property in the name of Her Majesty in right of the Province, subject to such terms and conditions as the Lieutenant-Governor in Council may prescribe. 1980, c.19.

4(1) The Lieutenant-Governor in Council may make regulations respecting the designation of a Minister or Ministers to act in the place and stead of any other Minister who is ill or is absent from the Province. 1975, c.20, s.2.

4(1.1) During the period for which a Minister is designated to act under subsection (1) the designated Minister, during the period for which he is so designated, has all the

3(2) Tous les droits, pouvoirs, obligations, fonctions, ou responsabilités ou toute autorité que confère ou impose à tout ministre avant ou après l'entrée en vigueur du présent paragraphe, une loi quelconque de la Législature ou du Parlement du Canada peuvent être transmis, conférés ou imposés à tel autre ministre que désigne le lieutenant-gouverneur en conseil, et, lorsqu'elle intervient, cette désignation est réputée être intervenue à la date qu'a fixée le lieutenant-gouverneur en conseil.

3(3) Le lieutenant-gouverneur en conseil peut transmettre la gestion et le contrôle de biens détenus par un membre du Conseil exécutif, au nom de sa Majesté du chef de la province,

a) à tel autre membre du Conseil exécutif que désigne le lieutenant-gouverneur en conseil, ou

b) à sa Majesté du chef du Canada,

selon les modalités que le lieutenant-gouverneur en conseil peut déterminer. S.R., c.75, art.3; 1961-62, c.19, art.2; 1964, c.28, art.1; 1966, c.53, art.2; 1967, c.38, art.2; 1968, c.27, art.2; 1971, c.31, art.2; 1972, c.28, art.3,4; 1979, c.19, art.2.

3(4) Le lieutenant-gouverneur en conseil peut accepter que lui soient transférés la gestion et le contrôle de biens détenus par sa Majesté du chef du Canada, et peut désigner le membre du Conseil exécutif chargé de détenir ces biens au nom de sa Majesté du chef de la province, selon les modalités que le lieutenant-gouverneur en conseil peut déterminer. 1980, c.19.

4(1) Le lieutenant-gouverneur en conseil peut établir des règlements visant à désigner un ou plusieurs ministres pour suppléer un autre ministre malade ou absent de la province. 1975, c.20, art.2.

4(1.1) Pendant la suppléance, le ministre suppléant est investi de tous les pouvoirs conférés au ministre qu'il remplace. 1975, c.20, art.2.

*Executive Council Act*

powers vested in the Minister for whom he is so acting. 1975, c.20, s.2.

4(2) When any office mentioned in section 2 becomes vacant, the Lieutenant-Governor in Council may appoint temporarily thereto another Minister to act during the vacancy, and such Acting Minister has all the powers incident to the office to which he is temporarily appointed.

4(3) Notice of an appointment made under subsection (2) shall be published in *The Royal Gazette*. R.S., c.75, s.4; 1972, c.28, s.5; 1975, c.20, s.2.

.....

4(2) Lorsqu'un des postes visés à l'article 2 devient vacant, le lieutenant-gouverneur en conseil peut y nommer temporairement un autre ministre pour la durée de la vacance et le ministre suppléant jouit de tous les pouvoirs attachés au poste auquel il est temporairement nommé.

4(3) Un avis de toute nomination intervenue en application du paragraphe (2) doit être publié dans la *Gazette royale* S.R., c.75, art.4; 1972, c.28, art.5; 1975, c.20, art.2.

.....

## Great Seal Act

R.S.N.B. 1973, c. G-6

## Loi sur le grand sceau

L.R.N.-B. 1973, c. G-6

**1** There shall be a Great Seal of the Province, which the Lieutenant-Governor in Council may from time to time change. R.S., c.100, s.1.

**2** Whenever the Lieutenant-Governor in Council changes the Great Seal he shall issue a proclamation under his hand and seal directing when such change shall take effect, and specifying as far as can be the changes made, and describing the Seal to be thenceforth used. R.S., c.100, s.2.

**3** Until changed under the provisions of this Act, the Great Seal at present in use shall continue to be the Great Seal of the Province. R.S., c.100, s.3.

**1** Il est créé un grand sceau de la province que le lieutenant-gouverneur en conseil peut modifier ou remplacer lorsqu'il l'estime opportun. S.R., c.100, art.1.

**2** Chaque fois qu'il modifie ou remplace le grand sceau, le lieutenant-gouverneur en conseil doit faire une proclamation revêtue de sa signature et de son sceau, fixant la date de prise d'effet de la modification ou du remplacement, précisant autant que faire se peut les modifications apportées et décrivant le sceau qui sera dorénavant utilisé. S.R., c.100, art.2.

**3** Sauf modification ou remplacement en vertu des dispositions de la présente loi, le grand sceau actuellement utilisé demeure le grand sceau de la province. S.R., c.100, art.3.



LEGISLATIVE POWER



POUVOIR LÉGISLATIF

## LEGISLATIVE POWER

### Introduction

New Brunswick statutory provisions concerning the legislative power deal with the composition and function of the Legislature, describe the present electoral system and treat the examination, publication and interpretation of statutes and regulations. This chapter is therefore divided as follows:

- a. Legislative bodies.
- b. Representation.
- c. Statutes and regulations.

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## POUVOIR LÉGISLATIF

### Introduction

La législation du Nouveau Brunswick relative à l'autorité législative porte sur les composantes et le fonctionnement du pouvoir législatif, décrit le système électoral en vigueur et traite de l'examen, de la publication et de l'interprétation des textes législatifs et réglementaires. Ce chapitre est donc divisé comme suit:

- a. Les composantes du pouvoir législatif
- b. La représentation
- c. Les lois et règlements

## LEGISLATIVE BODIES

### Introduction

The legislature of New Brunswick was originally set up in 1785, and held its first session on January 3, 1786. In pursuance of section 88 of the British North America Act, its constitution was continued when the province joined Confederation in 1867. Since the abolition of the Legislative Council in 1891 (S.N.B. 1891, c. 9), the legislative power in New Brunswick is exercised by the Lieutenant Governor and one elected chamber, the Legislative Assembly, as provided for by the Legislative Assembly Act (R.S.N.B. 1973, c. L-3). In the exercise of its function, the New Brunswick Legislative Assembly has to follow the division of legislative powers between the federal and provincial governments as set up especially in sections 91 to 95 of the British North America Act. In their relations with the executive and the judicial powers, the holders of the legislative power also have to take into consideration the constitutional principles relating to the parliamentary system and the form of responsible government which prevails in Canada. These principles are stated briefly in the introduction to the federal legislative power, in volume 2 of this collection, pp. F5, and subs.

The Lieutenant Governor, the chief executive officer of the province, exercises some legislative functions. He invites the leader of the political party which obtained a majority of the popular votes in an election to form a new government. He summons, adjourns or dissolves the Legislative Assembly; delivers the Speech from the Throne at the opening of the Assembly, which is prepared by the Cabinet, and formally opens and closes each session of the Legislative Assembly. The major legislative function of the Lieutenant Governor is to give royal assent to all bills passed by the Legislative Assembly, giving them final legal effect. He can, however, withhold the assent or reserve the bill for the approbation by the Governor General of Canada, but this power is rarely



used. The Legislative Assembly, on the other hand, enacts legislation within its jurisdiction, exercises supervision and control over government and administrative actions, and serves as a forum for discussion on matters of provincial, regional or local interest. It is for the province what the House of Commons is for the federal government. It is governed by the Legislative Assembly Act reproduced below, and by implementing regulations. The Legislative Assembly is composed of 58 members elected for a maximum statutory term of five years and two months in 58 single member electoral districts. It may be dissolved at any time during that period by the Lieutenant Governor on the advice of the Premier.

Selected references:

Laundy, Philip, "Legislatures", in Bellamy, David J., and others, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 280-296.

## LES COMPOSANTES DU POUVOIR LÉGISLATIF

### Introduction

La législature du Nouveau-Brunswick a été mise sur pied en 1785 et tint sa première session le 3 janvier 1786. Par application de l'art. 88 de l'A.A.N.B., 1867 et depuis l'abolition du Conseil législatif en 1891 (S.N.B. 1891, c. 9), le pouvoir législatif de cette province comprend le lieutenant-gouverneur et une chambre élue appelée Assemblée législative. Dans l'exercice de ses fonctions, le législateur du Nouveau-Brunswick doit respecter le partage des compétences législatives entre l'état fédéral et les provinces tel qu'établi plus particulièrement aux art. 91 à 95 de l'A.A.N.B. Dans leurs relations avec les pouvoirs exécutif et judiciaire, les détenteurs de l'autorité législative doivent également tenir compte des principes constitutionnels rattachés au régime parlementaire et au système de gouvernement responsable en vigueur au Canada. Ces principes sont brièvement énoncés dans l'introduction générale sur le pouvoir législatif fédéral aux pages F8 et suivantes du volume 2 de cette collection.

En plus d'être le chef de l'exécutif provincial, le lieutenant-gouverneur exerce certaines fonctions reliées au pouvoir législatif. C'est lui qui, à la suite d'une élection, invite le chef du parti politique qui a fait élire le plus grand nombre de députés à former le nouveau gouvernement. C'est lui qui convoque, proroge et dissout chaque législature et préside l'ouverture de chaque session en faisant la lecture du discours du trône préparé par le premier ministre et son cabinet. Sa principale fonction parlementaire consiste à sanctionner les lois adoptées par l'Assemblée législative et à leur donner ainsi une existence juridique. Il peut aussi désavouer ces lois ou les réserver à l'approbation du gouverneur général du Canada; ce pouvoir de désaveu ou de réserve est, toutefois, rarement exercé. De son côté, l'Assemblée législative remplit la fonction de législateur, exerce une surveillance et un contrôle sur les activités du gouvernement et de l'administration et sert de forum de délibérations où sont débattues les questions d'intérêt provincial, régional et local. Elle est en quelque sorte à la province ce que la Chambre des communes est à l'état fédéral. Elle est régie par la Loi sur l'Assemblée législative reproduite ci-après, ainsi que par les règlements qu'elle s'est donnés sous l'autorité de cette loi. Elle se compose de 58 députés, chacun

représentant l'un ou l'autre des 58 districts électoraux de la province. Les députés sont élus pour une période n'excédant pas cinq ans deux mois. Cependant, le lieutenant-gouverneur, sur l'avis du premier ministre, peut dissoudre l'assemblée législative en tout temps avant l'expiration de ce terme.

Source choisie

Laundy, Philip, "Legislatures" dans David J. Bellamy et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 280-296.



## LEGISLATIVE ASSEMBLY ACT

R.S.N.B. 1973, c. L-3

with amendments to date, including 1980, c. 29

Note:

Not reproduced are sections 10, 19, 25 to 32 and Schedule A, dealing with various allowances and indemnities paid to members of the Legislative Assembly. It should be useful to consult the Members Superannuation Act (R.S.N.B. 1973, c. M-8), and the most recent edition of the Standing Rules of the Legislative Assembly.

## LOI SUR L'ASSEMBLÉE LÉGISLATIVE

L.R.N.-B. 1973, c. L-3

et ses modifications à jour, y inclus 1980, c. 29

Note:

Les art. 10, 19, 25 à 32 et l'annexe A de cette loi ne sont par reproduits. Ces dispositions portent sur les traitements et allocations versés aux députés et sur les dépenses qui peuvent leur être remboursées. Par ailleurs, il y aurait lieu de consulter aussi la Loi sur la pension de retraite des députés (L.R.N.-B. 1973, c. M-8) et l'édition la plus récente du Règlement de l'Assemblée législative.

## Legislative Assembly Act

## Loi sur l'Assemblée législative

1(1) In all matters and cases not specially provided for by any Statute of the Province, the Legislative Assembly of New Brunswick, and the committees and members thereof respectively, shall hold, enjoy and exercise such and the like privileges, immunities and powers, as are held, enjoyed and exercised by the House of Commons of Canada and by the respective committees and members thereof; and such privileges, immunities and powers of the Legislative Assembly shall be deemed to be and are part of the general and public law of New Brunswick, and it shall not be necessary to plead the same, but the same shall in all courts of justice in this Province, and by and before all justices and others, be taken notice of judicially.

1(2) Nothing in this section contained shall be construed to contravene or conflict with any legislation *intra vires* of the Parliament of Canada. R.S., c.129, s.1.

2(1) The present and every future Legislative Assembly of this Province shall, subject to the provisions contained in subsection (2), continue for five years and two months from the day of the issue of the writ for choosing the same, unless sooner dissolved by the Lieutenant-Governor; and no Legislative Assembly of this Province shall be affected by the demise of the Crown.

2(2) Unless sooner dissolved by the Lieutenant-Governor, the present and every future Legislative Assembly, if it is in session at the expiration of the term fixed by subsection (1), shall continue until prorogued by the Lieutenant-Governor, and for forty days thereafter and no longer. R.S., c.129, s.2.

1(1) En ce qui concerne les questions et situations qui ne font pas l'objet d'une disposition particulière d'une loi de la province, l'Assemblée législative du Nouveau-Brunswick, ses comités et ses membres possèdent et exercent les mêmes privilèges, immunités et pouvoirs que la Chambre des communes du Canada, ses comités correspondants et ses membres; et ces privilèges, immunités et pouvoirs de l'Assemblée législative sont réputés faire partie et font partie du droit général et public du Nouveau-Brunswick; il n'est pas nécessaire d'en plaider la validité qui en est admise d'office par tous les tribunaux de la province ainsi que par et devant tous les juges et autres personnes.

1(2) Aucune disposition du présent article ne doit s'interpréter comme pouvant aller à l'encontre d'une loi relevant de la compétence législative du Parlement du Canada ou être en conflit avec une telle loi. S.R., c.129, art.1.

2(1) Sous réserve des dispositions du paragraphe (2), la durée de la présente Assemblée législative de la province et de celles qui la suivront sera de cinq ans deux mois à compter du jour de la publication des brefs d'élection, à moins que l'Assemblée législative ne soit dissoute plus tôt par le Lieutenant-gouverneur; et la transmission de la Couronne n'affecte pas la durée d'une Assemblée législative de cette province.

2(2) À moins d'être dissoute plus tôt par le lieutenant-gouverneur, la présente Assemblée législative, ou toute Assemblée législative ultérieure, si elle est en session à la fin du mandat prévu par le paragraphe (1), doit rester en fonctions jusqu'à sa prorogation par le Lieutenant-gouverneur et durant les quarante jours suivants, mais pas davantage. S.R., c.129, art.2.

*Legislative Assembly Act*

**3** A committee of the Legislative Assembly appointed for the purpose of making an investigation or inquiry in relation to any public office or public work, whether wholly or partly under Provincial control or in which the Province is interested as proprietor or stockholder or to which provincial aid is or may have been given during the conduct of such work, in respect of which such aid is given and authorized as hereinafter provided, shall have full power to send for persons, papers and records, and to examine all witnesses on oath. R.S., c.129, s.3.

**4(1)** The chairman of a committee, or in his absence any member thereof, shall have power, during the sitting of, and in the presence of, such committee, to administer the witnesses' oath to any person attending before the committee; and a minute of the oath having been administered shall be entered on the minutes of the proceedings.

**4(2)** The form of oath administered under subsection (1) shall be as follows:

The evidence you shall give before the committee now sitting, touching the matter in question, shall be the truth, the whole truth, and nothing but the truth – So help you God. R.S., c.129, s.4; 1973, c.74, s.49.

**5(1)** If a person served with the summons wilfully disobeys the same, or if a witness before a committee misdemeans himself in giving or refusing to give evidence, the chairman, or any member of the committee, by resolution of the majority of the committee, may at any time during the investigation or inquiry report the misconduct to the Legislative Assembly, and the Legislative Assembly may commit the offender into custody for contempt, for any period not exceeding the then session of the Legislature.

**5(2)** The summons mentioned in subsection (1) shall state that the person to whom it is directed is required to attend personally before a committee of the Legislative Assembly, at the time and place mentioned, to testify the truth according to his knowledge in a certain investigation or

**3** Tout comité de l'Assemblée législative constitué en vue de faire une investigation ou enquête sur toute charge ou entreprise publique relevant en tout ou partie de la province ou dans laquelle la province possède des intérêts à titre de propriétaire ou d'actionnaire, ou qui bénéficie ou peut avoir bénéficié d'une aide de la province accordée, au cours des travaux pour lesquels cette aide est accordée et autorisée conformément aux dispositions énoncées ci-après, est habilité à faire comparaître des personnes et produire des documents et dossiers, et à interroger tous témoins sous serment. S.R., c.129, art.3.

**4(1)** Le président du comité ou, en son absence, tout membre du comité, a le pouvoir, durant les séances du comité et en présence de ses membres, de faire prêter le serment des témoins, à toute personne qui fait une déposition devant le comité, et une mention du fait que le serment a été prêté doit être portée au procès-verbal des délibérations.

**4(2)** La formule du serment prêté en application du paragraphe (1) est la suivante:

Les preuves que vous offrirez au comité en réunion concernant la question doivent être la vérité, toute la vérité et rien que la vérité. Que Dieu vous soit en aide. S.R., c.129, art.4; 1973, c.74, art.49.

**5(1)** Si une personne à qui a été signifiée la sommation, refuse délibérément de comparaître, ou si un témoin se rend coupable d'inconduite devant un comité soit pendant qu'il témoigne, soit en refusant de témoigner, le président ou tout membre du comité, sur résolution majoritaire du comité peut, à tout moment de l'investigation ou enquête, faire rapport à l'Assemblée législative du refus de comparaître ou de l'inconduite, et l'Assemblée législative peut faire incarcérer le coupable pour outrage pendant une durée n'excédant pas celle de la session courante de la Législature.

**5(2)** La sommation visée au paragraphe(1) doit indiquer que la personne à laquelle elle est signifiée est tenue de se présenter en personne devant le Comité de l'Assemblée législative au temps et lieu fixés afin de rendre un témoignage véridique, autant qu'elle soit au courant de la



*Loi sur l'Assemblée législative*

inquiry concerning the subject stated; and shall state that failure to attend is subject to penalties provided in such case. R.S., c.129, s.5; 1973, c.74, s.49.

6 All persons and witnesses summoned to attend and attending before a committee shall be entitled to their reasonable expenses, which shall be paid by warrant of the Lieutenant-Governor, on being certified by the chairman of the committee. R.S., c.129, s.6.

7 The summons shall be signed by the chairman, or in his absence by any two members of the committee, and shall be personally served. R.S., c.129, s.7.

8 Before the powers conferred by this Act are exercised, they shall be delegated specially to the committee by resolution of the Legislative Assembly. R.S., c.129, s.8.

9(1) The Legislative Assembly may by resolution confer upon a select committee appointed for any purpose or upon a standing committee power to sit after prorogation of a session. 1979, c.37, s.1.

9(2) When such power has been conferred upon a select committee, the committee shall not cease to exist upon prorogation of a session but shall continue to exist until

- (a) the committee makes its final report, or
- (b) dissolution of the Legislative Assembly.

9(3) The Legislative Administration Committee shall sit notwithstanding the adjournment or prorogation of a session. 1965, c.24, s.1; 1979, c.37, s.1.

question discutée, lors de toute investigation ou enquête, et elle doit également indiquer que le défaut de se présenter peut entraîner les peines prévues dans ce cas. S.R., c.129, art.5; 1973, c.74, art.49.

6 Toutes les personnes et tous les témoins sommés de comparaître et comparissant devant un comité ont droit au remboursement de leurs frais raisonnables, qui leur seront payés par mandat du lieutenant-gouverneur sur certification des frais par le président du comité. S.R., c.129, art.6.

7 La sommation doit porter la signature du président ou, en son absence, celles de deux membres du comité, et sa signification doit être faite à personne. S.R., c.129, art.7.

8 Avant l'exercice des pouvoirs conférés par la présente loi, ils doivent être spécialement délégués au comité par une résolution de l'Assemblée législative. S.R., c.129, art.8.

9(1) L'Assemblée législative peut, par résolution, conférer à un comité spécial, nommé à toute fin, ou à un comité permanent, le pouvoir de siéger après la prorogation d'une session. 1979, c.37, art.1.

9(2) Lorsque ce pouvoir a été conféré à un comité spécial, ce comité, au lieu de cesser d'exister à la prorogation d'une session, continue d'exister jusqu'à ce que

- a) le comité fasse son rapport final, ou que
- b) l'Assemblée législative soit dissoute.

9(3) Le comité d'administration de l'Assemblée législative siège nonobstant l'ajournement ou la prorogation d'une session. 1965, c.24, art.1; 1979, c.37, art.1.

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*Legislative Assembly Act*

**11** A copy of the resolution constituting such committee and delegating such powers, and of the evidence taken before the committee, certified by the clerk of the Legislative Assembly, shall be evidence in all courts of the appointment of such committee, and of the evidence having been given. R.S., c.129, s.9.

**12** No member of the Legislative Assembly shall be subject to any of the provisions of sections 5 and 6, but any member may, by leave of the Legislative Assembly, attend any committee, as heretofore accustomed, and according to parliamentary usage. R.S., c.129, s.10.

**13** A witness shall not be compelled to answer any question that, in a court he could not be required to answer, nor to produce any paper that in a court he could not be required to produce; nor shall any evidence given by a witness render him liable to any action or proceeding in any court, or be used against him in any case. R.S., c.129, s.11.

**14** When the Speaker is unavoidably absent from a sitting of the Legislative Assembly, the Deputy Speaker shall take the Chair and shall perform the duties and exercise the authority of the Speaker in relation to all proceedings of the Legislative Assembly until the meeting of the Legislative Assembly on the next sitting day, and so from day to day until the Legislative Assembly otherwise orders; but if the Legislative Assembly adjourns for more than twenty-four hours, the Deputy Speaker shall continue to perform the duties and exercise the authority of the Speaker for twenty-four hours only after such adjournment. R.S., c.129, s.12; 1961-62, c.21, s.1; 1963(2nd Sess.), c.26, s.1; 1964, c.39, s.1.

**15** When the Legislative Assembly is informed by the Clerk of the unavoidable absence of both the Speaker and Deputy Speaker, or of the absence of the Speaker when a Deputy Speaker has not been appointed, the Legislative Assembly shall on motion, whereon the question shall be put by the Clerk, appoint a member to take the Chair and act as Speaker during the continuance of such absence or until the Legislative Assembly otherwise orders. R.S., c.129, s.13; 1964, c.39, s.1.

**11** Une copie, certifiée conforme par le greffier de l'Assemblée législative, de la résolution constituant un comité et déléguant ces pouvoirs, ainsi que des dépositions faites devant le comité fait preuve, devant tous les tribunaux, de la nomination du comité et des dépositions. S.R., c.129, art.9.

**12** Les dispositions des articles 5 et 6 ne s'appliquent à aucun député, mais tout député peut, avec l'autorisation de l'Assemblée législative, assister aux réunions de tout comité, selon la coutume établie, et conformément aux usages parlementaires. S.R., c.129, art.10.

**13** Aucun témoin ne peut être contraint à répondre à une question à laquelle il ne pourrait être tenu de répondre devant un tribunal ni de produire aucun papier qu'il ne pourrait être tenu de produire devant un tribunal; et aucune déposition d'un témoin ne l'expose à une action ou procédure devant un tribunal, ni ne peut être utilisée contre lui en aucune circonstance. S.R., c.129, art.11.

**14** Lorsque, pour une raison majeure, l'Orateur est absent d'une séance de l'Assemblée législative, l'Orateur suppléant la préside, y remplit les fonctions et y exerce les pouvoirs de l'Orateur en ce qui concerne tous les travaux de l'Assemblée législative jusqu'à la séance suivante de l'Assemblée législative et ainsi de suite de jour en jour jusqu'à ce que l'Assemblée législative en décide autrement; mais si l'Assemblée législative ajourne ses séances pour plus de vingt-quatre heures, l'Orateur suppléant ne doit continuer à remplir les fonctions et à exercer les pouvoirs de l'Orateur que durant les vingt-quatre heures qui suivent l'ajournement. S.R., c.129, art.12; 1961-62, c.21, art.1; 1963(2<sup>e</sup> sess.), c.26, art.1; 1964, c.39, art.1.

**15** Lorsque l'Assemblée législative est informée par le greffier de l'absence, pour une raison majeure, de l'Orateur et de l'Orateur suppléant, ou de l'absence de l'Orateur lorsqu'un Orateur suppléant n'a pas été nommé, l'Assemblée législative doit, sur motion mise aux voix par le greffier, nommer un député chargé de présider l'assemblée et de faire fonction d'Orateur pendant la durée de cette absence ou jusqu'à ce que l'Assemblée législative en décide autrement. S.R., c.129, art.13; 1964, c.39, art.1.

Loi sur l'Assemblée législative

16 When the Speaker finds it necessary to leave the Chair he may call upon the Deputy Speaker or, in his absence, upon any member of the House to take the Chair and act as Speaker, and the member so called upon shall take the Chair and act as Speaker during the remainder of the day, unless the Speaker himself resumes the Chair before the close of the sitting for the day. R.S., c.129, s.14; 1964, c.39, s.1.

17 When, pursuant to section 14, 15 or 16, any member other than the Speaker performs the duties and exercises the authority of the Speaker,

(a) every act done by such member in the proper discharge of his duties shall have the same effect and validity as if it had been done by the Speaker, and

(b) every Act passed, every order made and everything done by the Legislative Assembly while such member is acting as Speaker shall be as valid and effectual as if the Speaker himself was in the Chair. R.S., c.129, s.15; 1964, c.39, s.1.

18 The Speaker may vacate the office of Speaker by a declaration to that effect in the House or by a written resignation to the Minister of Municipal Affairs signed in the presence of and certified by two members. R.S., c.129, s.16; O.C.67-164; 1978, c.D-11.2, s.23.

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20(1) No person is eligible to be a member of or capable of sitting or voting in the Legislative Assembly whose election or return under the *Elections Act* or *Political Process Financing Act* is null and void. 1978, c.34, s.2.

16 Lorsque l'Orateur se trouve dans la nécessité d'interrompre sa présidence d'une séance, il peut demander à l'Orateur suppléant ou, en l'absence de ce dernier, à tout député de la Chambre, de présider et faire fonction d'Orateur, et ce député doit présider et faire fonction d'Orateur durant le reste de la journée, à moins que l'Orateur lui-même ne reprenne la présidence avant la fin de la séance de la journée. S.R., c.129, art.14; 1964, c.39, art.1.

17 Lorsque, conformément aux articles 14, 15 ou 16, tout député autre que l'Orateur remplit les fonctions et exerce les pouvoirs de l'Orateur

a) tout acte fait par ce député dans l'exercice de ses fonctions a le même effet et est aussi valide que s'il était fait par l'Orateur, et

b) toute loi ou tout décret adoptés par l'Assemblée législative et tout acte fait par elle pendant que ce député fait fonction d'Orateur est aussi valide et a le même effet que si l'Orateur lui-même avait présidé l'assemblée. S.R., c.129, art.15; 1964, c.39, art.1.

18 L'Orateur peut abandonner ses fonctions d'Orateur soit par déclaration à cet effet en Chambre, soit par démission écrite, signée en présence de deux députés, certifiée par eux et adressée au ministre des Affaires municipales. S.R., c.129, art.16; D.C. 67-164; 1978, c.D-11.2, art.23.

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20(1) Nul n'est admissible comme député ou n'est habilité à siéger ou à voter à l'Assemblée législative si son élection ou sa déclaration d'élection en application de la *Loi électorale* ou de la *Loi sur le financement de l'activité politique* est nulle et non avenue. 1978-c.34, art.2.



*Legislative Assembly Act*

20(2) Nothing in this section shall render ineligible as aforesaid any person because he is a member of the Executive Council for the Province or Chairman or a member of The New Brunswick Electric Power Commission.

20(3) The acceptance by a member of the Legislative Assembly

(a) of any of the offices mentioned in subsection (2), or

(b) of any compensation for property required for a public work in connection with the Mactaquac Hydro Electric Power Development,

shall not vacate his seat. R.S., c.129, s.18; 1959, c.58, s.1; 1960-61, c.53, s.1; 1964, c.39, s.2, 3, 4; 1967, c.51, s.1, 2; 1972, c.42, s.4.

21 Repealed. 1979, c.37, s.4.  
R.S., c.129, s.19.

22(1) If any person, being a member of the Legislative Assembly, accepts a nomination as candidate for the House of Commons, his seat in the Legislative Assembly shall thereby be vacated.

22(2) If any person, being a member of the Legislative Assembly, is or becomes disqualified as a member thereof under any of the provisions of this Act, his seat in the Legislative Assembly shall thereby be vacated. R.S., c.129, s.20.

23 Any member or member-elect may vacate his seat by a written resignation to the Minister of Municipal Affairs, signed in the presence of and certified by two members or two members-elect. R.S., c.129, s.21; O.C.67-164; 1978, c.D-11.2, s.23.

24 In case of a vacancy by death, resignation or otherwise of a member or member-elect, the Minister of Municipal Affairs, upon being certified thereof in writing by two members or two members-elect, shall report the vacancy forthwith to the Lieutenant-Governor in Council. R.S., c.129, s.22; O.C.67-164; 1960, c.46, s.1; 1978, c.D-11.2, s.23.

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20(2) Aucune disposition du présent article n'enlève le droit précité à une personne parce qu'elle est membre du Conseil exécutif de la province ou président ou membre de la Commission d'énergie électrique du Nouveau-Brunswick.

20(3) L'acceptation, par un député à l'Assemblée législative,

a) de l'une des fonctions mentionnées au paragraphe (2), ou

b) d'une indemnité pour un bien requis pour des travaux publics relatifs au projet hydro-électrique de Mactaquac,

ne rend pas son siège vacant. S.R., c.129, art.18; 1959, c.58, art.1; 1960-61, c.53, art.1; 1964, c.39, art.2, 3, 4; 1967, c.51, art.1, 2; 1972, c.42, art.4.

21 Abrogé. 1979, c.37, art.4.  
S.R., c.129, art.19.

22(1) Si un député à l'Assemblée législative accepte d'être présenté comme candidat à la Chambre des communes, son siège à l'Assemblée législative devient de ce fait vacant.

22(2) Si un député à l'Assemblée législative a perdu ou perd le droit de l'être, en vertu d'une disposition de la présente loi, son siège à l'Assemblée législative devient, de ce fait, vacant. S.R., c.129, art.20.

23 Tout député ou député nouvellement élu peut abandonner son siège en adressant au ministre des Affaires municipales une démission écrite, signée en présence de deux députés ou députés nouvellement élus, et certifiée par eux. S.R., c.129, art.21; D.C. 67-164.

24 Au cas de vacance causée par le décès, la démission ou autre fait d'un député ou d'un député nouvellement élu, le ministre des Affaires municipales, sur certificat écrit attestant le fait, fourni par deux députés ou députés nouvellement élus, doit rapporter sans délai la vacance au lieutenant-gouverneur en conseil. S.R., c.129, art.22; D.C. 67-164; 1960, c.46, art.1; 1978, c.D-11.2, art.23.

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## REPRESENTATION

### Introduction

Members of the Legislative Assembly have to be elected pursuant to the existing New Brunswick legislation concerning representation. According to this legislation, the electorate of New Brunswick not only elects its representative government, but can also express its opinion through a plebiscite on any question submitted by the Lieutenant Governor in Council at the time of a general election.

A large portion of legislation on representation deals with the electoral procedure and thus extends beyond the scope of constitutional law. This chapter will summarize the main characteristics of the system of representation and the participation of the population in the electoral process, providing a brief description of each statute on this question. Except when specified, the statutes described below are not reproduced in this collection.

1. Election Act, R.S.N.B. 1973, c. E-3, as amended.

Note: This statute, of which extracts only are reproduced below, contains the important elements of the electoral system of New Brunswick.

2. Political Process Financing Act, S.N.B. 1978, c. P-9.3; R.S.N.B. 1973, c. P-9.3, as amended.

Note: This statute of 97 sections, not reproduced here, regulates the question of the financing of political parties, district associations and independent candidates in provincial elections. It requires the registration of any political party, district association and independent candidate who wants to accept contributions and incur election expenditures. It provides for the financial supervision of political activities through the filing and auditing of financial returns, and supplies political financing of political parties. It describes the duties of official agents, and finally, defines offences and penalties. This statute is supplemented by sections



130 to 153 of the Election Act cited above, which deal with the registration of political parties, district associations and independent candidates with the Chief Electoral Officer.

3. Controverted Elections Act, R.S.N.B. 1973, c. C-21, as amended.

Note: This statute, not reproduced here, describes the act of corrupt practice, and establishes the procedure to follow before the courts in the case of a controverted election of a member to the Legislative Assembly. This action is introduced by an election petition.

4. Corrupt Practices Inquiries Act, R.S.N.B. 1973, c. C-27, as amended.

Note: This statute, not reproduced here, deals with the inquiry concerning alleged corrupt practices during an election.

5. Conflict of Interest Act, S.N.B. 1978, c. C-16.1, as amended.

Note: This statute, not reproduced here, describes circumstances which may lead to conflict of interest cases of members of the Legislative Assembly, Cabinet Ministers, executive staff members, deputy ministers, and heads of Crown corporations. It requests these persons to disclose under oath to a designated judge all information pertaining to ownership of real or personal property, and all business and financial involvement. It prescribes heavy penalties, including imprisonment, for any person who does not comply with this act or an order issued by a designated judge acting under this statute.

#### Selected references:

Bellamy, David J., and others, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, 394 p. See Chapter 2, pp. 147-196: Election Systems; Election Expenses; and Elections.

## LA REPRÉSENTATION

### Introduction

Les membres de l'Assemblée législative doivent être élus en conformité de la législation du Nouveau-Brunswick en matière de représentation. En plus de pouvoir procéder au choix de ses gouvernants, la collectivité de cette province peut, en vertu de cette même législation, être consultée sur toute question soumise par voie de plébiscite que le lieutenant-gouverneur en conseil peut décréter à l'occasion d'une élection générale. Comme une partie importante de cette législation porte sur la procédure et débordé le cadre du droit constitutionnel, le présent chapitre ne fait que dégager les principales caractéristiques du système de représentation et de participation de la population en présentant un bref résumé de chaque loi relative à cette question. Sauf indication au contraire, les lois ci-après résumées ne sont pas reproduites:

1. Loi électorale, L.R.N.-B. 1973, c. E-3 et ses modifications

Note: Cette loi, dont on reproduit les principales dispositions plus loin, définit les caractéristiques fondamentales du système électoral du Nouveau-Brunswick.

2. Loi sur le financement de l'activité politique, L.N.-B. 1978, c. P-9.3; L.R.N.-B. 1973, c. P-9.3 et ses modifications

Note: Cette loi de près de 100 articles réglemente le financement des partis politiques, des associations de circonscription et des candidats à une élection provinciale. Elle soumet à la formalité de l'enregistrement tout parti politique, toute association de circonscription et tout candidat indépendant désireux de recevoir des contributions et d'effectuer des dépenses électorales. Elle pourvoit au contrôle du financement de l'activité politique par la production et la vérification de rapports financiers. Elle assure le financement public des partis politiques enregistrés. Elle décrit les devoirs des agents officiels. Enfin, elle définit les infractions et détermine les peines qui s'y rattachent. Cette loi est complétée par les art. 130 à 153 de la Loi électorale précitée qui déterminent les formalités de l'enregistrement des partis politiques, des associations de circonscription, des candidats indépendants, des représentants officiels et des agents d'élection auprès du directeur général des élections.

3. Loi sur les contestations d'élections, L.R.N.-B. 1973, c. C021 et ses modifications

Note: Cette loi définit l'acte de corruption et établit la procédure à suivre devant les tribunaux judiciaires en matière de contestation d'élection d'un candidat à l'Assemblée législative. Cette contestation est introduite par voie de requête en annulation d'élection.

4. Loi relative aux enquêtes sur les manoeuvres frauduleuses, L.R.N.-B. 1973, c. C-27 et ses modifications

Note: Cette loi prévoit la procédure d'enquête sur de prétendues manoeuvres frauduleuses commises lors d'une élection.

5. Loi sur les conflits d'intérêts, L.N.-B. 1978, c. C-16.1 et ses modifications

Note: Cette loi décrit les situations de conflit d'intérêts dans lesquelles peuvent se placer les députés, ministres, adjoints ministériels, sous-ministres et présidents de sociétés de la couronne. Elle oblige ces personnes à divulguer sous serment et en justice toute l'information relative à leurs biens réels ou personnels, à leurs activités professionnelles et à leurs entreprises financières. Des peines sévères, y compris l'emprisonnement, sont prévues à l'encontre des personnes qui enfreignent la présente loi ou les ordonnances judiciaires rendues sous son autorité.

#### Source choisie

Bellamy, David J. et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, 394 p. Consulter les pp. 147-196: Election Systems; Election Expenses; Elections.



## ELECTIONS ACT

R.S.N.B. 1973, c. E-3

with amendments to date, including 1980, c.32

Note:

This statute contains 153 sections and a schedule concerning electoral districts. Only sections dealing with the following matters are reproduced below:

- a) Ineligibility to act as election officers: section 10;
- b) Qualifications and disqualifications of electors: sections 43;
- c) Qualifications and nomination of candidates: sections 47 to 51(1);
- d) Right to vote: section 76 (1), and (4);
- e) Voting secrecy: section 81;
- f) Interpreter for voter, and French language forms, sections 85, and 128(3);
- g) Time for employees for voting: section 86;
- h) Penalties for corrupt or illegal practices: section 119; and
- i) Procedure for plebiscites: section 129(1) to (4).

In addition to this statute, one should also consult the Legislative Assembly Act reproduced above, especially its sections concerning qualifications and disqualifications of members of the Legislative Assembly. It would also be useful to consult regulations issued in pursuance of this statute, listed under the title of this act, in the index of the last annual volume of New Brunswick Regulations, and in the Royal Gazette, Part II.

## LOI ÉLECTORALE

L.R.N.-B. 1973, c. E-3

et ses modifications à jour, y inclus 1980, c.32

### Note:

Cette loi contient 153 articles et une annexe sur les circonscription électorales. Seuls les articles portant sur les questions suivantes sont reproduits:

- a) les personnes inhabiles à agir comme membres du personnel électoral: art. 10
- b) la qualité d'électeur et l'inhabilité à voter: art. 43
- c) l'éligibilité des candidats et la mise en nomination: art. 47-51(1)
- d) le droit de vote: art. 76(1) et (4)
- e) le secret du vote: art. 81
- f) la nomination d'un interprète auprès des scrutateurs et la traduction en français des formules prescrites par la loi: art. 85, 128(3)
- g) le temps accordé aux employés pour voter: art. 86
- h) certaines sanctions pénales en cas de manoeuvre frauduleuse ou d'acte illicite: art. 119
- i) le plébiscite: art. 129 (1) à (4).

Les extraits reproduits ci-après tiennent compte de toutes les modifications apportées à ce jour à la loi, y compris celles du c. 41 des L.N.-B. 1979. Outre la présente loi, il y aurait lieu de consulter les dispositions de la Loi sur l'Assemblée législative, déjà reproduite, concernant l'admissibilité des personnes comme membres de l'Assemblée législative. Il peut être utile aussi de consulter les règlements établis en vertu de la présente loi et mentionnés dans la table des matières du dernier volume annuel des Règlements du Nouveau-Brunswick et dans l'index de la Gazette royale, Partie II.

Elections Act

Loi électorale

INTERPRETATION

1 This Act governs every election of a member or members of the Legislative Assembly. 1967, c.9, s.1.

INTERPRÉTATION

1 La présente loi régit l'élection de tout député à l'Assemblée législative. 1967, c.9, art.1.

ELECTION OFFICERS

10 None of the following persons shall be appointed as election officers:

- (a) persons under the age of eighteen years;
- (b) persons who have not been resident for twelve months in the electoral district where they are to act;
- (c) persons not qualified as electors in the electoral district where they are to act;
- (d) persons who have been found guilty of a corrupt practice under the electoral laws of Canada, of any province, or of any municipality. 1967, c.9, s.10; 1971, c.29, s.2.

MEMBRES DU PERSONNEL ÉLECTORAL

10 Ne peuvent être nommés membres du personnel électoral les personnes qui

- a) n'ont pas dix-huit ans;
- b) ne résident pas depuis douze mois dans la circonscription électorale où elles doivent exercer leurs fonctions;
- c) ne sont pas habilitées à voter dans la circonscription électorale où elles doivent exercer leurs fonctions;
- d) ont été reconnues coupables de manoeuvres frauduleuses aux termes des lois électorales du Canada, d'une province ou d'une municipalité. 1967, c.9, art.10; 1971, c.29, art.2.

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QUALIFICATIONS AND DISQUALIFICATIONS OF ELECTORS

43(1) Except as hereinafter provided every person is qualified to vote and entitled to have his name placed on the list of electors for the polling division in which he ordinarily resides at the time of the preparation and revision of the list of electors therefor, if he

- (a) is of the full age of eighteen years or will attain the full age of eighteen years on or before polling day at the pending election,
- (b) is a Canadian citizen, or is a British subject who was resident in the Province prior to January 1, 1979,

PERSONNES QUI ONT QUALITÉ D'ÉLECTEUR ET CELLES QUI SONT INHABILES À VOTER

43(1) À l'exception des cas prévus ci-après, toute personne a qualité d'électeur et a droit de faire inscrire son nom sur la liste des électeurs de la section de vote dans laquelle elle réside ordinairement lors de la préparation et de la révision à cette fin de la liste électorale, si elle

- a) a dix-huit ans révolus ou aura dix-huit ans révolus au plus tard le jour du scrutin de l'élection en cours,
- b) est citoyen canadien ou sujet britannique résidant dans la province depuis une date antérieure au 1<sup>er</sup> janvier 1979,



(c) has been ordinarily resident in the Province for six months immediately preceding the date of the issue of the writ for the pending election, and

(d) subject to subsection 45(5), was ordinarily resident in the electoral district at the date of the issue of the writ for the pending election. 1980, c.17, s.13.

(e) *Repealed. 1974, c.12(Supp.), s.9.*

c) a résidé ordinairement dans la province pendant les six mois qui ont immédiatement précédé la date d'émission du bref ordonnant l'élection en cours, et

d) résidait ordinairement dans la circonscription électorale à la date d'émission du bref ordonnant l'élection en cours, sous réserve du paragraphe 45(5). 1980, c.17, art.13.

e) *Abrogé. 1974, c.12(Supp.), art.9.*

43(2) The following persons are disqualified from voting and shall not vote:

(a) the Chief Electoral Officer;

(b) the returning officer for each electoral district during his term of office, except when there is an equality of votes in the final addition of votes or on a recount;

(c) judges of The Court of Queen's Bench of New Brunswick;

(d) judges appointed under the *Provincial Court Act*;

(e) every person undergoing punishment as an inmate in a penal institution for the commission of any offence;

(f) every person who is legally restrained of his liberty of movement or deprived of the management of his property by reason of mental disease or infirmity;

(g) every person who is disqualified from voting under any law relating to the disqualification of electors for corrupt or illegal practices. 1967, c.9, s.43; 1971, c.29, s.3; 1979, c.41, s.42(1); 1980, c.17, s.13.

.....

#### QUALIFICATION OF CANDIDATES

47 Subject to the provisions of this Act, any person who is qualified under this Act to vote may be a candidate for election to and be returned as a member of the Legislative Assembly. 1967, c.9, s.47.

43(2) Les personnes suivantes sont inhabiles à voter et ne doivent pas voter:

a) le directeur général des élections;

b) le directeur du scrutin de chaque circonscription électorale tant qu'il reste en fonction, sauf en cas de partage des voix dans l'addition finale des voix ou lors d'un dépouillement judiciaire;

c) les juges de la Cour du Banc de la Reine du Nouveau-Brunswick;

d) les juges nommés par application de la *Loi sur la Cour provinciale*;

e) toute personne détenue dans un établissement pénitentiaire et y purgeant une peine pour avoir commis quelque infraction;

f) toute personne légalement restreinte dans sa liberté de mouvement ou privée de la gestion de ses biens pour cause de maladie ou d'incapacité mentale;

g) toute personne inhabile à voter par application d'une loi relative à la privation du droit de vote pour manœuvres frauduleuses ou actes illicites. 1967, c.9, art.43; 1971, c.29, art.3; 1979, c.41, art.42(1); 1980, c.17, art.13.

.....

#### ÉLIGIBILITÉ DES CANDIDATS

47 Sous réserve des dispositions de la présente loi, toute personne qui a qualité d'électeur en application de la présente loi peut être candidat à une élection et peut être élue député à l'Assemblée législative. 1967, c.9, art.47.

*Elections Act*

**47.1** A person who is not qualified to vote at a by-election may be a candidate at that by-election and may be returned as a member of the Legislative Assembly if he would be qualified to vote if the by-election were a general election. 1974, c.12(Supp.), s.10.

**48** No person is eligible to be a candidate or capable of being elected or returned as a member of the Legislative Assembly who is a senator of Canada or a member of the House of Commons. 1967, c.9, s.48.

**48.1(1)** No person is eligible to be a member of the Legislative Assembly or of sitting or voting in the Legislative Assembly who is a mayor or councillor of a municipality.

**48.1(2)** Subsection (1) does not apply so as to prevent from sitting and voting in the Legislative Assembly any person who, on the coming into force of this section, is both a member of the Legislative Assembly and a mayor or councillor of a municipality, but this exemption shall apply only until

(a) a municipal election or by-election is held, subsequent to the 1980 triennial municipal election, or

(b) an election is held under this Act,

in which the person is a candidate, whichever occurs first. 1980, c.17, s.14.

**49** Repealed. 1980, c.17, s.15.

**50** If any person who is by this or any other Act disqualified from, or declared incapable of, being elected a member of the Legislative Assembly, is nevertheless elected and returned as a member, his election and return is null and void. 1967, c.9, s.50.

PROCEDURE AT NOMINATION

**51(1)** Any ten or more electors qualified to vote in the electoral district for which an election is to be held may nominate a candidate for that

**47.1** Une personne qui n'est pas habile à voter à une élection partielle mais qui le serait si cette élection était une élection générale peut se porter candidate à l'élection partielle et être élue député à l'Assemblée législative. 1974, c.12 (Supp.), art.10.

**48** Un sénateur du Canada ou un membre de la Chambre des communes ne peut se présenter comme candidat ni être élu député à l'Assemblée législative. 1967, c.9, art.48.

**48.1(1)** Un maire ou un conseiller municipal ne peut se présenter comme député à l'Assemblée législative, ni y siéger ou y voter.

**48.1(2)** Le paragraphe (1) ne s'applique pas de manière à empêcher de siéger et de voter à l'Assemblée législative, toute personne qui, lors de l'entrée en vigueur du présent article, est à la fois membre de l'Assemblée législative et maire ou conseiller municipal, mais cette dispense ne s'applique que jusqu'à la tenue

a) d'une élection ou d'une élection partielle municipale postérieure à l'élection municipale trisannuelle de 1980, ou

b) d'une élection en vertu de la présente loi

à laquelle cette personne se porte candidate, suivant que l'une ou l'autre de ces élections survient la première. 1980, c.17, art.14.

**49** Abrogé. 1980, c.17, art.15.

**50** Si une personne que la présente loi ou toute autre loi prive du droit ou déclare incapable d'être élue député à l'Assemblée législative est néanmoins élue député, son élection est nulle et non avenue. 1967, c.9, art.50.

PROCÉDURE RELATIVE À LA DÉCLARATION DES CANDIDATURES

**51(1)** Dix électeurs ou plus ayant qualité pour voter dans la circonscription électorale où une élection doit avoir lieu peuvent présenter un

Loi électorale

electoral district by signing a nomination paper in the form prescribed by regulation, stating therein such particulars of the name, address and occupation of the person proposed as sufficiently to identify such candidate, and the address of the candidate for service of process and papers under this Act, or under the *Controverted Elections Act* or the *Corrupt Practices Inquiries Act*, and by causing such nomination paper to be produced to and filed with the returning officer at any time between the date of the proclamation and the close of nominations as hereinafter specified, and by complying in all other respects with this section.

.....

WHO MAY VOTE

76(1) Subject to his taking any oath authorized by this Act to be required of him, a person whose name appears on the official list of electors for a polling station shall be permitted to vote at such polling station.

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76(4) No elector shall vote more than once at the same election. 1967, c.9, s.76; *Am.1974, c.92 (Supp.), s.9.*

.....

SECRECY

81(1) Every candidate, officer, clerk, agent or other person in attendance at a polling station or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to obtain, or communicate or attempt to communicate, any information as to the candidate for whom any elector has voted.

81(2) Except as provided in section 83, no elector shall during the time he is in the polling station disclose in any manner the name of a candidate for whom he intends to vote or has voted.

81(3) Every person who contravenes or fails to observe any provision of this section is guilty of an illegal practice. 1967, c.9, s.81.

candidat dans cette circonscription en signant une déclaration de candidature selon la formule prescrite par règlement, en y indiquant les détails relatifs au nom, à l'adresse et à l'occupation de la personne proposée qui suffisent pour identifier ce candidat, ainsi que l'adresse du candidat pour la signification des actes de procédure et des documents en application de la présente loi, ou de la *Loi sur les contestations d'élections* ou de la *Loi relative aux enquêtes sur les manoeuvres frauduleuses*, et en faisant produire et déposer cette déclaration de candidature au bureau du directeur du scrutin à tout moment entre la date de l'avis d'élection et celle de clôture des déclarations des candidatures spécifiée ci-après, et en se conformant à toutes les autres dispositions du présent article.

.....

QUI PEUT VOTER

76(1) Une personne dont le nom figure sur la liste électorale officielle d'un bureau de scrutin est admise à voter à ce bureau, sous réserve qu'elle prête tout serment qui peut être exigé d'elle par application de la présente loi.

.....

76(4) Aucun électeur ne doit voter plus d'une fois à la même élection. 1967, c.9, art.76; *Mod.1974, c.92(Supp.), art.9.*

.....

SECRET DU VOTE

81(1) Tout candidat, agent, secrétaire, représentant ou toute autre personne présente à un bureau de scrutin ou au dépouillement du scrutin, doit garder et aider à garder le secret du scrutin, et aucun d'eux ne doit essayer d'obtenir, ni communiquer ni essayer de communiquer, des renseignements sur la façon dont a voté un candidat.

81(2) Sauf dans les cas prévus à l'article 83, aucun électeur ne doit, pendant qu'il est au bureau de scrutin, révéler d'aucune façon le nom du candidat pour lequel il a voté ou a l'intention de voter.

81(3) Quiconque enfreint quelque disposition du présent article ou omet de s'y conformer est coupable d'un acte illicite. 1967, c.9, art.81.



Elections Act

INTERPRETER

85(1) Whenever the deputy returning officer does not understand the language spoken by an elector, he shall if possible appoint an interpreter who shall be the means of communication between him and the elector with reference to all matters required to enable such elector to vote.

85(2) The Interpreter shall take the oath following:

“I swear (or affirm) that I will faithfully translate such oaths, declarations, questions and answers as the deputy returning officer shall require of me to translate at this election. So help me God.” 1967, c.9, s.85.

.....

FORMS

128(3) The Chief Electoral Officer shall cause every form to be available in both official languages. 1980, c.17, s.43.

.....

TIME TO EMPLOYEES FOR VOTING

86(1) Every employee who is a qualified elector shall, while the polls are open on polling day at an election, have three consecutive hours for the purpose of casting his vote, and if the hours of his employment do not allow for such three consecutive hours, his employer shall allow him such additional time for voting as may be necessary to provide three consecutive hours.

86(2) No employer shall make any deduction from the pay of any such employee nor impose upon or exact from him any penalty by reason of absence from his work during such consecutive hours.

86(3) Any additional time for voting shall be granted at the convenience of the employer.

86(4) This section extends to railway companies and their employees, except such employees as are

INTERPRÈTE

85(1) Toutes les fois que le scrutateur ne comprend pas la langue d'un électeur, il doit si possible nommer un interprète pour lui servir d'intermédiaire pour communiquer à l'électeur tous les renseignements nécessaires afin qu'il puisse exercer son droit de vote.

85(2) L'interprète doit prêter le serment suivant:

«Je jure (ou J'affirme) que je traduirai fidèlement les serments, déclarations, questions et réponses que le scrutateur me demandera de traduire pendant la présente élection. Que Dieu me soit en aide.» 1967, c.9, art.85.

.....

FORMULES

128(3) Le directeur général des élections doit faire en sorte que toutes les formules soient disponibles dans les deux langues officielles. 1980, c.17, art.43.

.....

TEMPS ACCORDÉ AUX EMPLOYÉS POUR VOTER

86(1) Tout employé qui est habile à voter doit disposer de trois heures consécutives pour aller voter pendant les heures d'ouverture des bureaux de scrutin, le jour du scrutin, lors d'une élection, et s'il ne peut disposer de trois heures consécutives à cause de ses heures de travail, son employeur doit lui accorder le temps qu'il lui faudra de façon à ce qu'il dispose de trois heures consécutives pour aller voter.

86(2) Aucun employeur ne doit faire de déduction sur le salaire d'un tel employé ni lui imposer de sanction par suite de son absence du travail durant ces heures consécutives.

86(3) Le temps accordé pour voter doit être accordé à la convenance de l'employeur.

86(4) Le présent article s'applique aux compagnies de chemins de fer et à leurs employés, sauf

*Loi électorale*

actually engaged in the running of trains and to whom such time cannot be allowed without interfering with the manning of the trains.

86(5) Any employer who, directly or indirectly, refuses, or by intimidation, undue influence, or in any other way, interferes with the granting to any elector in his employ, of the consecutive hours for voting, as in this section provided, is guilty of an illegal practice and of an offence against this Act punishable on summary conviction as provided in this Act. 1967, c.9, s.86.

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## PENALTIES AND PROCEDURE

119 Any person who is convicted of having committed any offence that is a corrupt or illegal practice shall, during the five years next after the date of his being convicted, in addition to any other punishment by this or any other Act prescribed, be disqualified from and be incapable of

- (a) being registered as an elector or of voting at any election,
- (b) holding any office in the nomination of the Crown or of the Lieutenant-Governor in Council, or
- (c) being elected to or sitting in the Legislative Assembly and, if at such date he has been elected to the Legislative Assembly, his seat shall be vacated from the time of such conviction. 1967, c.9, s.119.

.....

## PLEBISCITES

129(1) The Lieutenant-Governor in Council may, by proclamation issued not later than the date of an order in council commencing a general election, order the taking of a plebiscite for the purpose of submitting a question or questions to the electors of the Province at the same time as the general election.

ceux, parmi ces derniers, qui sont véritablement occupés à faire circuler les trains et à qui ce temps ne peut être accordé sans nuire à ce service.

86(5) Tout employeur qui, directement ou indirectement, refuse, ou, par intimidation, abus d'influence ou de toute autre manière, empêche un électeur à son emploi de disposer des heures consécutives pour aller voter, tel qu'il est prévu au présent article, est coupable d'un acte illicite et d'une infraction à la présente loi punissable sur déclaration sommaire de culpabilité de la façon prévue dans la présente loi. 1967, c.9, art.86.

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## PEINES ET PROCÉDURE

119 Quiconque est déclaré coupable d'une infraction constituant une manoeuvre frauduleuse ou un acte illicite est, pendant les cinq années qui suivent la date de sa déclaration de culpabilité, en plus de toute autre peine imposée par la présente loi ou par toute autre loi, privé du droit et incapable

- a) d'être inscrit comme électeur ou de voter à une élection,
- b) de remplir une charge dont la Couronne ou le lieutenant-gouverneur en conseil nomme le titulaire, ou
- c) d'être élu ou de siéger à l'Assemblée législative et, s'il est déjà élu à cette date à l'Assemblée législative, son siège devient vacant à la date d'une telle déclaration de culpabilité. 1967, c.9, art.119.

.....

## PLÉBISCITES

129(1) Le lieutenant-gouverneur en conseil peut, par voie de proclamation publiée au plus tard à la date d'un décret du conseil ordonnant la tenue d'élections générales, décréter le recours à un plébiscite afin de soumettre une ou plusieurs questions aux électeurs de la province en même temps que les élections générales.

*Elections Act*

**129(2)** The proclamation shall state fully the question to be submitted at the plebiscite in the same words and form as it will appear on the ballot paper.

**129(3)** A proclamation issued under this section shall be published in

- (a) *The Royal Gazette*, and
- (b) such newspapers as are prescribed in subsection 18(2). *Am.1974, c.12(Supp.), s. 29.*

**129(4)** Every person qualified to vote at the general election is qualified to vote upon any question submitted to the electors.

.....

**129(2)** La proclamation doit exposer entièrement la question qui sera soumise au plébiscite, et dans les mêmes termes et la même forme qu'elle paraîtra sur le bulletin de vote.

**129(3)** Une proclamation lancée en vertu du présent article doit être publiée

- a) dans la *Gazette royale*, et
- b) dans les journaux qui sont prescrits à l'article 18(2). *Mod.1974, c.12(Supp.), art.29.*

**129(4)** Quiconque a qualité pour voter aux élections générales peut voter sur toute question soumise aux électeurs.

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## STATUTES AND REGULATIONS

### Introduction

Finally this chapter on the legislative power of New Brunswick will examine statutory sources dealing with the elaboration, publication and interpretation of statutes and regulations.

### STATUTES

A provincial statute has to be passed by the Legislative Assembly and assented to by the Lieutenant Governor to become law. The Legislative Assembly has to examine every bill following an orderly procedure comprising three readings. At the time of the second reading bills are often considered by committees of the Assembly. It should be mentioned that in order to encourage the drafting of uniform laws, New Brunswick has passed a statute entitled: An Act to Provide for the Appointment of Commissioners for the Promotion of Uniformity of Legislation in Canada (S.N.B. 1918, c. 5), not reproduced here.

Once assented to by the Lieutenant Governor, the statutes of New Brunswick have to be printed in English and French, according to section 7 of the Official Languages of New Brunswick Act (R.S.N.B. 1973, c. O-1). Their publication has to follow the provisions specified in the Queen's Printer Act, mentioned below. Pursuant to sections 5 and 9 of this statute, and section 62 of the Evidence Act (R.S.N.B. 1973, c. E-11), only copies of provincial statutes published by the Queen's Printer following the text of certified copies furnished by the Clerk of the Legislative Assembly, are prima facie evidence of their existence and contents. While there is no specific act concerned with the publication of statutes, the revised statutes are, however, dealt with by the Statutes Revision Act (S.N.B. 1972, c. 13, as amended), especially regarding their publication and interpretation.

The statutes of New Brunswick passed since April 19, 1950, have to be construed following the rules contained in the Interpretation Act (R.S.N.B. 1973, c. I-13), and pursuant to section 33 of this statute, any other rules of construction not inconsistent with this act. Statutes passed before April 19, 1950, have to be

construed following the rules in the Interpretation Act of 1927 (R.S. N.B. 1927, c. 1). Only the Interpretation Act published in the revised statutes of 1973 is reproduced below, as amended.

## REGULATIONS

The Regulations Act of New Brunswick provides for the filing, publication and consolidation of regulations. Every regulation shall be filed with the Registrar of Regulations, and published in the Royal Gazette or in such other manner within one month of the filing if not exempted by the Lieutenant Governor in Council. Unless a later day is provided a regulation comes into force on the day it is filed with the Registrar. The production of a regulation proved in a way specified by the Evidence Act is prima facie evidence of its filing. Finally it should be mentioned that the rules of construction set forth in the Interpretation Act apply to New Brunswick regulations as well.

Legislative sources dealing with the elaboration, publication and interpretation of statutes and regulations are as follows:

1. British North America Act.

Note: The provisions of its sections 53 to 57 dealing with the elaboration of statutes apply mutatis mutandis to New Brunswick as specified in its section 90. The B.N.A. Act does not contain any provision concerning the interpretation of statutes or regulations.

2. Interpretation Act, R.S.N.B. 1973, c. I-13, as amended.

Note: This statute, reproduced below, applies to the interpretation of regulations as well as statutes.

3. Regulation Act, R.S.N.B. 1973, as amended.

Note: This statute, not reproduced here, entrusts the Registrar with the custody and publication of regulations, including consolidations, and establishes conditions regarding their validity and coming into force. It is supplemented by various regulations made by the Lieutenant Governor in Council.

4. Statutes Revision Act, S.N.B. 1972, c. 13, as amended.

Note: This statute, not reproduced here, deals with the elaboration, publication, coming into force, and interpretations of the revised statutes of 1973.



5. Official Languages of New Brunswick Act, R.S.N.B. 1973, c. O-1, as amended.

Note: This statute, reproduced below under "Language Rights," provides that statutes and other official documents or writings are to be printed in English and French, and both versions are equally authentic. This requirement, however, does not apply to statutes amending statutes printed in only one of the official languages.

6. Queen's Printer Act, R.S.N.B. 1973, c. Q-3, as amended.

Note: This statute, not reproduced here, entrusts specifically the Queen's Printer of the province with the publication and distribution of statutes, and sanctions their authenticity. It is supplemented by regulations made by the Lieutenant Governor in Council.

7. Evidence Act, R.S.N.B. 1973, c. E-11, as amended.

Note: Sections 62 to 75 deal with the judicial notice and documentary evidence of imperial, federal, provincial and foreign statutes, ordinances or regulations.

## LOIS ET RÈGLEMENTS

### Introduction

Ce chapitre sur le pouvoir législatif au Nouveau-Brunswick se termine par une étude sur l'élaboration, la publication et l'interprétation des lois et règlements.

### Les lois

Aucune loi de cette province ne peut avoir d'existence juridique sans avoir été adoptée au préalable par l'Assemblée législative et sanctionnée par le lieutenant-gouverneur. L'assemblée législative doit examiner tout projet de loi en suivant une procédure établie qui comporte trois lectures. Lors de la seconde lecture, les projets de loi sont souvent soumis à la considération de comités parlementaires. Il y a lieu de souligner que, dans le but de favoriser la rédaction de lois uniformes, le Nouveau-Brunswick a adopté la loi intitulée An Act to Provide for the Appointment of Commissioners for the Promotion of Uniformity of Legislation in Canada (S.N.B. 1918, c. 5), non reproduite ici.

Une fois sanctionnées, les lois de la province doivent être imprimées en anglais et en français en conformité de l'art. 7 de la Loi sur les langues officielles du Nouveau-Brunswick (L.R.N.-B., c. 0-1). Leur publication doit être conforme à la Loi sur l'Imprimeur de la Reine résumée plus loin. En vertu des art. 5 et 9 de cette loi et de l'art. 62 de la Loi sur la preuve (L.R.N.-B. 1973, c. E-11), seuls les exemplaires des lois de la province imprimés par l'Imprimeur de la Reine et dont il a reçu copies certifiées conformes de la part du greffier de l'Assemblée législative, constituent une preuve prima facie de leur existence et de leur teneur. Bien qu'il n'existe pas de loi générale sur la publication des lois, le cas particulier des lois refondues est couvert par la Loi sur la révision des lois (L.N.-B. 1972, c. 13 et ses modifications), plus particulièrement en ce qui regarde leur publication et leur interprétation.

Les lois du Nouveau-Brunswick adoptées depuis le 19 avril 1950 doivent être interprétées suivant les règles énoncées dans la Loi d'interprétation (L.R.N.-B. 1973, c. I-13) et, par application de l'art. 33 de cette loi, suivant toute autre

règle qui n'est pas incompatible avec ses dispositions. Quant aux textes législatifs adoptés avant le 19 avril 1950, ils continuent d'être interprétés selon l'Interpretation Act de 1927 (R.S.N.B. 1927, c. 1). Seule la Loi d'interprétation publiée dans la refonte de 1973 est reproduite ci-après en tenant compte de ses modifications

### Les règlements

La Loi sur les règlements du Nouveau-Brunswick traite du dépôt et de la publication des règlements provinciaux. Tout règlement doit être déposé au bureau du registraire des règlements et être publié dans la Gazette royale ou de toute autre manière dans le mois qui suit la date de son dépôt, à moins que le lieutenant-gouverneur en conseil n'ait accordé une dispense de publication. Sauf si une date ultérieure est prévue, il entre en vigueur le jour de son dépôt chez le registraire. La production d'un règlement en la manière prévue par la Loi sur la preuve constitue une preuve prima facie de son dépôt. Enfin, il y a lieu de se rappeler que les règlements s'interprètent suivant les dispositions de la Loi d'interprétation déjà citée.

Les sources législatives sur l'élaboration, la publication et l'interprétation des lois et règlements du Nouveau-Brunswick sont les suivantes:

#### 1. A.A.N.B.

Note: Par application de l'art. 90 de cette loi impériale, ses art. 53 à 57 sur l'élaboration des lois s'appliquent mutatis mutandis au Nouveau-Brunswick. L'A.A.N.B. ne renferme cependant aucune disposition sur l'interprétation des lois ou sur le pouvoir réglementaire.

#### 2. Loi d'interprétation, L.R.N.-B. 1973, c. I-13 et ses modifications

Note: Cette loi, reproduite ci-après, s'intéresse à l'interprétation des lois et des règlements.

#### 3. Loi sur les règlements, L.R.N.-B. 1973, c. R-7 et ses modifications

Note: Cette loi, non reproduite ici, confie au registraire des règlements la garde et la publication des textes réglementaires de la province et détermine les conditions relatives à leur validité et à leur entrée en vigueur. Elle est complétée par divers règlements établis par le lieutenant-gouverneur en conseil.



4. Loi sur la révision des lois, L.N.-B. 1972, c. 13 et ses modifications

Note: Cette loi, non reproduite, touche à l'élaboration, à la mise en vigueur, à la publication et à l'interprétation des lois refondues de 1973.

5. Loi sur les langues officielles du Nouveau-Brunswick, L.R.N.-B. c. 0-1 et ses modifications

Note: Cette loi, reproduite plus loin au chapitre "Droits linguistiques" de ce fascicule, prévoit notamment que les lois et autres documents officiels ou écrits doivent être imprimés en anglais et en français et que les deux versions font pareillement autorité. Cette obligation ne s'applique toutefois pas à l'égard des lois qui en modifient d'autres qui n'ont été imprimées que dans une langue officielle.

6. Loi sur l'Imprimeur de la Reine, L.R.N.-B. 1973, C. Q-3 et ses modifications

Note: Cette loi, non reproduite ici, confie notamment à l'Imprimeur de la Reine de la province l'impression et la diffusion des lois et règlements et consacre l'authenticité des publications imprimées par ce dernier. Elle se complète par des règlements établis par le lieutenant-gouverneur en conseil.

7. Loi sur la preuve, L.R.N.-B. 1973, C. E-11 et ses modifications

Note: Les art. 62 à 75 de cette loi ont trait à la connaissance judiciaire et à la preuve documentaire des lois, ordonnances et règlements, qu'ils soient impériaux, fédéraux, provinciaux ou étrangers.

## Interpretation Act

R.S.N.B. 1973, c. I-13

with amendments to date, including  
1980, c.C-2.1

1(1) This Act extends and applies to every enactment and regulation except in so far as it

(a) is inconsistent with the intent or object of the enactment or regulation,

(b) would give to any word, expression or clause in the enactment or regulation an interpretation inconsistent with the context thereof or the interpretation section of the enactment or regulation, or

(c) is by the enactment or regulation declared not applicable thereto.

1(2) Where an enactment or regulation contains an interpretation section or provision, it shall be read and construed as being applicable only if the contrary intention does not appear.

1(3) This Act applies to the interpretation of the Revised Statutes, 1973 and of all other Acts passed at the 1950 session of the Legislature and subsequent thereto.

1(4) This Act does not apply to any enactment or regulation enacted or made prior to the 19th day of April, 1950.

1(5) *The Interpretation Act*, being Chapter 1 of *The Revised Statutes, 1927*, stands unrepealed in respect of any enactment or regulation enacted or made prior to the 19th day of April, 1950, but does not apply to any other enactment or regulation. R.S., c.114, s.1; 1958, c.40, s.1.

2 All Acts shall be enacted in the name of Her Majesty, and the enacting clause may be in the form following: "Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:". R.S., c.114, s.2.

## Loi d'interprétation

L.R.N.-B. 1973, c.I-13

et ses modifications à jour, y inclus  
1980, c.C-2.1

1(1) La présente loi s'étend et s'applique à tout texte législatif et à tout règlement, sauf dans la mesure où elle :

a) est incompatible avec le sens ou l'objet du texte législatif ou du règlement,

b) donnerait à quelque mot, expression ou disposition du texte législatif ou du règlement une interprétation incompatible avec le contexte ou avec l'article d'interprétation du texte législatif ou du règlement, ou

c) est déclarée, dans le texte législatif ou le règlement, ne pas s'y appliquer.

1(2) Lorsqu'un texte législatif ou un règlement contient un article ou une disposition d'interprétation, ceux-ci doivent se lire et s'interpréter comme étant applicables seulement si une intention contraire n'est pas manifeste.

1(3) La présente loi s'applique à l'interprétation des Lois révisées de 1973 et de toutes les autres lois adoptées à la session de 1950 de la Législature et aux sessions ultérieures.

1(4) La présente loi ne s'applique pas aux textes législatifs ou aux règlements édictés ou établis avant le 19 avril 1950.

1(5) La loi intitulée *The Interpretation Act*, chapitre 1 des Statuts révisés de 1927, n'est pas abrogée à l'égard de tout texte législatif ou règlement édicté ou établi avant le 19 avril 1950, mais elle ne s'applique à nul autre texte législatif ou règlement. S.R., c.114, art.1; 1958, c.40, art.1.

2 Toutes les lois doivent être édictées au nom de Sa Majesté, et le décret peut être formulé dans les termes suivants: «Sa Majesté, sur l'avis et du consentement de l'Assemblée législative du Nouveau-Brunswick, décrète:». S.R., c.114, art.2.

### *Interpretation Act*

3(1) The clerk of the Legislative Assembly shall endorse on every Act of the Legislature, immediately after the title of such Act, the day, month and year when the same was assented to by the Lieutenant-Governor, or reserved; in the latter case the Clerk of the Legislative Assembly shall also endorse thereon the day, month and year when the Lieutenant-Governor signifies either by speech or message to the Legislative Assembly, or by proclamation, that the same was laid before the Governor-General in Council, and that the Governor-General in Council was pleased to assent thereto.

3(2) The endorsement is part of the Act, and the date of the assent or signification is the date of the commencement of the Act, if no other commencement is therein provided. R.S., c.114, s.3.

4 Every Act shall be judicially noticed by all judges, justices of the peace, and others, without being specially pleaded. R.S., c.114, s.4.

5(1) Where an enactment or regulation or any provision thereof is to come into force on a particular day, or on a day fixed by proclamation or otherwise, it shall be construed as coming into force immediately on the expiration of the previous day.

5(2) Where an enactment or any provision thereof is not to come into force immediately on its being passed and confers power

- (a) to make appointments,
- (b) to hold elections,
- (c) to make regulations,
- (d) to give notices,
- (e) to prescribe forms,
- (f) to do any other thing,

that power may, for the purpose of making the enactment or provision effective at the date of its coming into force, be exercised at any time after the passing of the enactment, subject to the restriction that a regulation made under the power shall not, unless the contrary is necessary for making the enactment or provision effective from its commencement, come into force until

3(1) Le greffier de l'Assemblée législative inscrit sur chaque loi de la Législature, immédiatement après le titre de la loi, le jour, le mois et l'année où le Lieutenant-gouverneur l'a sanctionnée ou réservée; dans ce dernier cas, le greffier de l'Assemblée législative doit aussi y inscrire le jour, le mois et l'année où le Lieutenant-gouverneur a annoncé, soit par discours ou par message adressé à l'Assemblée législative, soit par proclamation, que cette loi a été présentée au gouverneur général en conseil, et qu'il a plu au gouverneur général en conseil de la sanctionner.

3(2) L'inscription fait partie de la loi, et la date de la sanction ou de l'annonce constitue la date de l'entrée en vigueur de la loi, à moins qu'une autre date n'y soit prévue. S.R., c.114, art.3.

4 Tous les juges, juges de paix et autres doivent prendre judiciairement connaissance de toutes les lois, sans qu'il soit nécessaire de les plaider spécialement. S.R., c.114, art.4.

5(1) Lorsqu'un texte législatif ou un règlement ou l'une quelconque de leurs dispositions doit entrer en vigueur à une date particulière ou à une date fixée par proclamation ou de toute autre façon, ils doivent s'interpréter comme entrant immédiatement en vigueur dès l'expiration du jour précédent.

5(2) Lorsqu'un texte législatif ou l'une quelconque de ses dispositions ne doit pas entrer en vigueur le jour même de son adoption mais confère le pouvoir

- a) de faire des nominations,
- b) de tenir des élections,
- c) d'établir des règlements,
- d) de donner des avis,
- e) de prescrire des formules,
- f) de faire toute autre chose,

ce pouvoir peut, aux fins de rendre le texte législatif ou la disposition effective à compter de son entrée en vigueur, être exercé en tout temps après l'adoption du texte législatif, sous réserve qu'un règlement établi en vertu de ce pouvoir n'entre pas en vigueur tant que le texte législatif ou la disposition ne sont pas eux-mêmes entrés en vigueur, sauf si le contraire s'impose aux fins de



### *Loi d'interprétation*

the enactment or provision comes into force. R.S., c.114, s.5.

6 No law of the Nova Scotia Legislature passed prior to the erection of the Province of New Brunswick has any force in this Province. R.S., c.114, s.6.

7(1) An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting or modifying a power, privilege or advantage thereby vested in or granted to a person.

7(2) An Act may be amended or repealed by an Act passed in the same session.

7(3) An amending Act, as far as consistent with the tenor thereof, shall be construed as part of the Act that it amends. R.S., c.114, s.7; 1958, c.40, s.2; 1973, c.74, s.45.

8(1) Where an enactment is repealed in whole or in part, or a regulation revoked in whole or in part, the repeal or revocation does not

(a) revive any enactment, regulation or thing not in force or existing at the time at which the repeal or revocation takes place,

(b) affect the previous operation of any enactment or regulation so repealed or revoked or anything duly done or suffered thereunder,

(c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the enactment or regulation so repealed or revoked,

(d) affect any offence committed against, or any violation of the provisions of the enactment or regulation so repealed or revoked, or any penalty, forfeiture or punishment incurred in respect thereof, nor

(e) affect any investigation, legal proceeding, or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment,

and the investigation, legal proceeding or remedy may be instituted, continued or enforced and the penalty, forfeiture or punishment imposed as if the enactment or regulation had not been repealed or revoked.

donner effet au texte législatif ou à la disposition dès son entrée en vigueur. S.R., c.114, art.5.

6 Aucune loi de la Législature de la Nouvelle-Écosse adoptée avant que la province du Nouveau-Brunswick soit constituée n'est applicable au Nouveau-Brunswick. S.R., c.114, art.6.

7(1) Une loi doit s'interpréter comme réservant à la Législature la faculté de l'abroger ou de la modifier et de révoquer, restreindre ou modifier un pouvoir, un privilège ou un avantage qu'elle attribue ou confère à une personne.

7(2) Une loi peut être modifiée ou abrogée par une autre loi adoptée au cours de la même session.

7(3) Une loi modificatrice doit, dans la mesure où sa teneur le permet, s'interpréter comme faisant partie de la loi qu'elle modifie. S.R., c.114, art.7; 1958, c.40, art.2; 1973, c.74, art.45.

8(1) Lorsqu'un texte législatif est abrogé en tout ou en partie ou un règlement révoqué en tout ou en partie, l'abrogation ou la révocation

a) ne remet pas en vigueur un texte législatif, un règlement ou une chose qui n'est pas en vigueur ou qui n'existe pas au moment où l'abrogation ou la révocation prend effet,

b) ne porte pas atteinte à l'application antérieure d'un texte législatif ainsi abrogé ou d'un règlement ainsi révoqué ni à une chose dûment faite ou subie sous leur régime,

c) ne porte pas atteinte aux droits, privilèges, obligations ou responsabilités, acquis, nés, naissant ou encourus en application du texte législatif ainsi abrogé ou du règlement ainsi révoqué,

d) n'a aucun effet sur une infraction aux dispositions du texte législatif ainsi abrogé ou du règlement ainsi révoqué, ni sur une violation de leurs dispositions, ni sur les peines, confiscations ou punitions subies à cet égard, ou

e) n'a aucun effet sur les enquêtes, procédures judiciaires ou recours concernant ces privilèges, obligations, responsabilités, peines, confiscations ou punitions,

et l'enquête, la procédure judiciaire ou le recours peuvent être engagés, continués ou mis à exécution, et la peine, la confiscation ou la punition imposée, comme si le texte législatif n'avait pas été abrogé ou le règlement révoqué.

### *Interpretation Act*

8(2) Where an enactment is repealed in whole or in part or a regulation revoked in whole or in part and other provisions are substituted therefor,

(a) every person acting under the enactment or regulation so repealed or revoked shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead,

(b) every bond and security given by any person appointed under the enactment or regulation so repealed or revoked shall remain in force, and all offices, books, papers and things made or used under the repealed or revoked enactment or regulation shall continue as before the repeal so far as consistent with the substituted provisions,

(c) every proceeding taken under the enactment or regulation so repealed or revoked may be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be,

(d) the procedure established by the substituted provisions shall be followed so far as it can be adapted in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights, existing or accruing under the enactment or regulation so repealed or revoked, or in any proceedings in relation to matters that have happened before the repeal or revocation, and

(e) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions so substituted, the penalty, forfeiture or punishment if imposed or adjudged after the repeal or revocation, shall be reduced or mitigated accordingly.

8(3) Where an enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision or consolidation the repeal does not affect the validity of

(a) any act, deed, right, title grant, assurance, descent, will, registry, filing, by-law, rule, order in council, proclamation, regulation, contract,

8(2) Lorsqu'un texte législatif est abrogé ou un règlement révoqué, en tout ou en partie, et que d'autres dispositions leur sont substituées,

a) toute personne agissant en application du texte législatif ainsi abrogé ou du règlement ainsi révoqué continue d'agir comme si elle avait été nommée en application des nouvelles dispositions, jusqu'à ce qu'un autre soit nommé à sa place,

b) tout cautionnement et toute garantie constituée par une personne nommée en application du texte législatif ainsi abrogé ou du règlement ainsi révoqué demeure en vigueur, et tous les bureaux, livres, documents et choses faits ou utilisés en application du texte législatif ainsi abrogé ou du règlement ainsi révoqué continuent d'être utilisés comme ils l'étaient avant l'abrogation dans la mesure que permettent les nouvelles dispositions,

c) toute procédure engagée en application du texte législatif ainsi abrogé ou du règlement ainsi révoqué peut être reprise et continuée en application et en conformité des nouvelles dispositions, dans la mesure où ces dernières le permettent,

d) la procédure établie par les nouvelles dispositions doit être suivie, dans la mesure où elle peut être adaptée, pour le recouvrement, l'exécution des peines et des confiscations encourues, et pour faire valoir des droits existant ou naissant en vertu du texte législatif ainsi abrogé ou du règlement ainsi révoqué, ou dans toute procédure relative à des choses survenues avant l'abrogation ou la révocation, et

e) si une peine, une confiscation ou une punition est réduite ou atténuée par une des nouvelles dispositions, la peine, la confiscation ou la punition, si elle est imposée ou prononcée après cette abrogation ou cette révocation, doit être réduite ou atténuée en conséquence.

8(3) Lorsqu'un texte législatif est abrogé en tout ou en partie et que d'autres dispositions lui sont substituées par voie de modification, de révision ou de refonte, l'abrogation ne porte pas atteinte à la validité

a) de tout acte, acte scellé, droit, concession de titre, cession, transmission par voie de succession, testament, enregistrement, dépôt, règle-



*Loi d'interprétation*

lien, charge, capacité, immunité, matière ou chose, fait, rendu, acquis, établis ou qui existent au moment de l'abrogation,

(b) any marriage licence or certificate, or registry thereof, or authority to solemnize marriage lawfully had, granted, made or existing before or at the time of such repeal,

(c) any office, appointment, commission, salary, remuneration, allowance, security or duty, or any matter or thing appertaining thereto established or existing at the time of the repeal, or

(d) any other matter or thing whatsoever had, done, completed, established, existing or pending at the time of the repeal,

where it is not inconsistent with or repugnant to the provisions so substituted.

8(4) Where an enactment that confers jurisdiction upon any justice of the peace, magistrate, or other functionary is repealed, the repeal does not affect the jurisdiction of any such person to bring a final conclusion the trial of any action pending before him at the time of the repeal, or to issue process or to enforce any judgment or order in the same manner as if the enactment was not repealed. R.S., c.114, s.8.

9 When an enactment is repealed, and other provisions are substituted by way of amendment, revision or consolidation, any reference in an unrepealed Act, or in any instrument or document, rule, order, regulation, by-law or ordinance made thereunder, to such repealed enactment, shall, as regards any subsequent transaction, matter or thing, be held and construed to be a reference to the provisions of the substituted enactment or amendment relating to the same subject matter as such repealed enactment; but where there is no provision in the substituted enactment relating to the same subject matter, the repealed enactment shall stand good, and be read and construed as unrepealed in so far, but in so far only, as is necessary to support, maintain, or

ment administratif, règle, décret en conseil, proclamation, règlement, contrat, droit de rétention, privilège, charge, pouvoir, immunité, affaire ou chose qui sont faits, rendus, acquis, établis ou qui existent au moment de l'abrogation,

b) d'une licence ou d'un certificat de mariage ou d'un enregistrement de ceux-ci, ou au pouvoir de célébrer un mariage, légalement obtenu, accordé, donné, ou existant avant l'abrogation ou au moment de l'abrogation,

c) d'un poste, d'une nomination, d'une commission d'un salaire, d'une rémunération, d'une allocation, d'une garantie ou d'une obligation, ou d'une autre affaire ou chose s'y rapportant, établis ou existant au moment de l'abrogation, ni

d) de toute autre affaire ou chose quelconque qui a été obtenue, faite, achevée ou établie ou qui existait ou était pendante au moment de l'abrogation,

lorsque cela n'est pas incompatible avec les nouvelles dispositions ou contraire à celles-ci.

8(4) Lorsqu'un texte législatif qui accorde une compétence à un juge de paix, à un magistrat ou à un autre fonctionnaire, est abrogé, l'abrogation ne porte pas atteinte à la compétence de mener à terme l'instruction de toute action dont il est saisi au moment de l'abrogation, de délivrer des brefs ou d'exécuter tout jugement ou toute ordonnance de la même manière que si le texte législatif n'avait pas été abrogé. S.R., c.114, art.8.

9 Lorsqu'un texte législatif est abrogé et que d'autres dispositions y sont substituées par voie de modification, de révision ou de refonte, tout renvoi au texte législatif abrogé dans une loi qui n'est pas abrogée ou dans un instrument, un document, une règle, un décret, un arrêté, un ordre, un règlement, un règlement administratif ou une ordonnance établis sous son régime, doit être, relativement à toute opération, affaire ou chose subséquente, considéré et interprété comme étant un renvoi aux dispositions du nouveau texte législatif ou de la modification substituée portant sur le même sujet que celui du texte législatif, mais lorsqu'il n'y a, dans le nouveau texte législatif, aucune disposition sur le même sujet, le texte législatif abrogé subsiste et doit se lire et



### *Interpretation Act*

give effect to, such unrepealed Act, or such instrument, document, rule, order, regulation, by-law or ordinance made thereunder. R.S., c.114, s.9.

10 When part of an Act is repealed, and any provision substituted therefor, the substituted provision, unless the contrary is expressly declared, takes effect from the date of the commencement of the repealing Act, and the expression "the commencement of this Act" when used in the provision so substituted, means the commencement of the repealing Act. R.S., c.114, s.10.

11(1) The repeal of an Act or regulation in whole or in part shall not be deemed to be or to involve a declaration that such Act or regulation or part thereof was previously in force.

11(2) The amendment of an Act or regulation shall not be deemed to be or to involve a declaration that the law under the Act or regulation was different from the law as it is under the Act or regulation as amended.

11(3) The repeal or amendment of an Act or regulation in whole or in part shall not be deemed to be or to involve any declaration as to the previous state of the law.

11(4) A re-enactment, revision, consolidation or amendment of an Act or regulation shall not be deemed to be or to involve an adoption of the construction that has by judicial decision or otherwise been placed upon the language used in the Act or regulation or upon similar language. R.S., c.114, s.11, 12, 13, 14; 1973, c.74, s.45.

12 An Act or regulation shall be considered as always speaking, and whenever a matter or thing is expressed in the present tense, it shall be applied to the circumstances as they arise, so that effect may be given to the Act or regulation and every part thereof according to its true spirit, intent and meaning. 1973, c.74, s.45.

s'interpréter comme s'il n'avait pas été abrogé, mais dans la mesure nécessaire pour appuyer ou maintenir la loi non abrogée ou l'instrument, le document, la règle, l'ordre, l'arrêté, le règlement, le règlement administratif ou l'ordonnance établis sous son régime ou leur donner effet. S.R., c.114, art.9.

10 Lorsqu'une partie d'une loi est abrogée et qu'une disposition quelconque y est substituée, la nouvelle disposition prend effet, à moins qu'une intention contraire ne soit manifeste, à compter de la date de l'entrée en vigueur de la loi d'abrogation, et l'expression «l'entrée en vigueur de la présente loi», lorsqu'elle est employée dans la nouvelle disposition, désigne l'entrée en vigueur de la loi d'abrogation. S.R., c.114, art.10.

11(1) L'abrogation de tout ou partie d'une loi ou d'un règlement n'est pas réputée constituer ni impliquer une déclaration portant que cette loi ou ce règlement ou une partie de ceux-ci était antérieurement en vigueur.

11(2) La modification d'une loi ou d'un règlement n'est pas réputée constituer ni impliquer une déclaration portant que le droit aux termes de la loi ou du règlement différerait de ce qu'est le droit aux termes de la loi ou du règlement modifié.

11(3) L'abrogation ou la modification de tout ou partie d'une loi ou d'un règlement n'est pas réputée constituer ni impliquer une déclaration quelconque sur l'état antérieur du droit.

11(4) La réadoption, la révision, la refonte ou la modification d'une loi ou d'un règlement n'est pas réputée constituer ni impliquer l'adoption de l'interprétation qui, par décision judiciaire ou de toute autre façon, a été donnée aux termes employés dans la loi ou le règlement ou à des termes analogues. S.R., c.114, art.11, 12, 13, 14; 1973, c.74, art.45.

12 Une loi ou un règlement est censé toujours parler et, chaque fois qu'une question ou une chose est exprimée au présent, il faut l'appliquer aux circonstances au fur et à mesure qu'elles surgissent, de façon à donner effet à la loi ou au règlement ainsi qu'à chacune de ses parties, selon son esprit, son objet et son sens véritables. 1973, c.74, art.45.

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**13** Where an Act establishes a corporation and in each of the English and French versions of the Act the name of the corporation is in the form only of the language of that version, the name of the corporation shall consist of the form of its name in each of the versions of the Act. 1973, c.74, s.45.

**14** Words in an Act establishing a corporation having a name consisting of an English and a French form or a combined English and French form shall be construed to vest in the corporation power to use either the English or French form of its name or both forms and to show on its seal both the English and French forms of its name or to have two seals, one showing the English and the other showing the French form of its name. 1973, c.74, s.45.

**15** The preamble of an Act is a part thereof, and intended to assist in explaining the purport and object of the Act. R.S., c.114, s.15.

**16** The marginal notes, the headings, and the references to former enactments printed at the end of sections form no part of an Act but are inserted for convenience of reference only. R.S., c.114, s.16.

**17** Every Act and regulation and every provision thereof shall be deemed remedial, and shall receive such fair, large and liberal construction and interpretation as best ensures the attainment of the object of the Act, regulation or provision. R.S., c.114, s.17.

**18** Where an Act confers power to make regulations or to grant, make or issue any Order in Council, order, writ, warrant, scheme or letters patent, expressions used in the exercise of the power shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power. R.S., c.114, s.18.

**19** Where the Lieutenant-Governor is authorized to do an act by proclamation, proclamation means a proclamation issued pursuant to an order of the Lieutenant-Governor in Council but it is

**13** Lorsqu'une loi établit une corporation et que, dans chacune des versions anglaise et française de la loi, le nom de la corporation n'est reproduit que dans la langue de cette version, le nom de la corporation doit comprendre l'appellation de ce nom tel que le reproduit chacune des versions de la loi. 1973, c.74, art.45.

**14** Les mots dans une loi établissant une corporation ayant un nom comprenant une appellation anglaise et une appellation française ou une appellation mixte anglaise et française doivent s'interpréter comme attribuant à la corporation le pouvoir d'utiliser soit l'appellation anglaise ou l'appellation française de son nom, soit les deux appellations et de reproduire sur son sceau les deux appellations anglaise et française de son nom ou de posséder deux sceaux dont l'un reproduit l'appellation anglaise et l'autre, l'appellation française de son nom. 1973, c.74, art.45.

**15** Le préambule d'une loi en fait partie et sert à en expliquer la portée et l'objet. S.R., c.114, art.15.

**16** Les notes marginales, les rubriques et les renvois à des dispositions législatives antérieures qui sont imprimés au bas des articles ne font pas partie de la loi, mais sont insérés aux seules fins de faciliter la consultation. S.R., c.114, art.16.

**17** Toute loi, tout règlement et toute disposition de ceux-ci sont réputés réparateurs et doivent faire l'objet de l'interprétation large, juste et libérale, la plus propre à assurer la réalisation de leurs objets. S.R., c.114, art.17.

**18** Lorsqu'une loi accorde le pouvoir d'établir des règlements ou d'accorder, de prendre ou de délivrer des décrets en conseil, des ordonnances, des arrêtés, des brevets, des mandats, des plans ou des lettres patentes, les expressions employées dans l'exercice de ce pouvoir ont, à moins qu'une intention contraire ne soit manifeste, le même sens qu'elles ont dans la loi qui confère le pouvoir. S.R., c.114, art.18.

**19** Lorsque le Lieutenant-gouverneur est autorisé à accomplir un acte par proclamation, cette proclamation désigne une proclamation lancée en conformité d'un décret du lieutenant-gouverneur



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not necessary to mention in the proclamation that it is issued under the order. R.S., c.114, s.19.

20 Every public officer now or hereafter appointed by or under the authority of an Act, or otherwise, shall remain in office during pleasure only, unless it is otherwise expressed in his commission or in the Act under or in pursuance of which he is appointed. R.S., c.114, s.20.

21(1) Words authorizing the appointment of a public officer include the power

- (a) of removing or suspending him,
- (b) of re-appointing or reinstating him,
- (c) of appointing another in his stead or to act in his stead, and
- (d) of fixing his remuneration and varying or terminating it,

in the discretion of the authority in whom the power of appointment is vested.

21(2) Where a power is conferred or a duty imposed on a person requiring him to do an act or thing, then, unless a contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires, and when the power is so conferred or the duty imposed upon the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office. R.S., c.114, s.21.

22 In an Act or regulation

- (a) where any act or thing is directed to be done by or before a public officer, it shall be done by or before one whose jurisdiction or power extends to the place where the thing is to be done;
- (b) where power is given to the Lieutenant-Governor in Council or a public officer to do or enforce the doing of an act or thing, all such powers are also given as are necessary to enable

en conseil; mais il n'est pas nécessaire de mentionner dans la proclamation qu'elle est lancée en vertu du décret. S.R., c.114, art.19.

20 Tout fonctionnaire public actuellement nommé ou qui peut l'être par une loi ou en application de celle-ci ou de toute autre façon, n'occupe sa charge qu'à titre amovible, à moins que la commission ou la loi en application ou en conformité de laquelle il a été nommé ne prescrive le contraire. S.R., c.114, art.20.

21(1) Les mots qui autorisent la nomination d'un fonctionnaire public comportent le pouvoir

- a) de le destituer ou de le suspendre de ses fonctions,
- b) de le nommer à nouveau ou de le réintégrer dans ses fonctions,
- c) d'en nommer un autre pour le remplacer ou agir à sa place, et
- d) de fixer sa rémunération, de la modifier ou de la supprimer,

à la discrétion de l'autorité investie du pouvoir de nomination.

21(2) À moins qu'une intention contraire ne soit manifeste, lorsqu'une personne se voit conférer le pouvoir ou imposer le devoir de faire une chose ou un acte, le pouvoir peut être exercé et le devoir doit être accompli lorsqu'il y a lieu et selon les besoins; quand le pouvoir est ainsi accordé ou le devoir imposé au titulaire d'un poste, en cette qualité, le pouvoir peut être exercé et le devoir doit être accompli par celui qui, à l'époque considérée, est chargé de l'exercice des pouvoirs et des fonctions attachés à ce poste. S.R., c.114, art.21.

22 Dans une loi ou un règlement,

- a) lorsqu'il est prescrit qu'un acte ou une chose doit se faire par ou devant un fonctionnaire public, l'acte doit être accompli ou la chose faite par ou devant un fonctionnaire public dont la compétence ou les pouvoirs s'étendent au lieu où la chose doit être faite;
- b) lorsqu'un pouvoir est accordé au lieutenant-gouverneur en conseil ou à un fonctionnaire public de faire ou de faire exécuter un acte ou une chose, tous les pouvoirs nécessaires



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him to do or enforce the doing of the act or thing;

(c) where the doing of an act or thing that is expressly authorized is dependent upon the doing of any other act or thing by the Lieutenant-Governor in Council or by a public officer, the Lieutenant-Governor in Council or public officer, as the case may be, has the power to do that other act;

(d) where an act or thing is required to be done by more than two persons, a majority may do it;

(e) where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed, from time to time, as occasion requires;

(e.1) where a document, notice, paper or other thing may be delivered or sent by registered mail, such document, notice, paper or other thing may be delivered or sent by certified mail;

(f) where a form is prescribed, deviations therefrom not affecting the substance nor calculated to mislead, shall not invalidate the form used;

(g) a word importing a masculine gender includes the feminine gender and a corporation to which the context may extend, and a word importing a feminine gender includes the masculine gender and a corporation to which the context may extend;

(h) a word in the singular includes the plural, and a word in the plural includes the singular;

(i) where a word is defined, other parts of speech and tenses of the same word shall have corresponding meanings;

(j) where the time limited for the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall extend to, and the act or thing may be done on, the day first following that is not a holiday;

(k) where a period of time dating from a specified day, act, or event is prescribed or allowed for any purpose, the time shall be reckoned exclusively of such day or of the day of such act or event. R.S., c.114, s.12; Am.(e.1), (g), 1978, c.31, s.1.

pour permettre à cette personne de faire ou de faire exécuter l'acte ou la chose sont aussi accordés;

c) lorsque l'exécution d'un acte ou d'une chose qui est expressément autorisé dépend de l'exécution d'un autre acte ou d'une autre chose par le lieutenant-gouverneur en conseil ou par un fonctionnaire public, le lieutenant-gouverneur en conseil ou le fonctionnaire public, selon le cas, a le pouvoir de faire cet autre acte;

d) lorsqu'un acte ou une chose doit être accompli par plus de deux personnes, la majorité d'entre elles peuvent l'accomplir;

e) lorsqu'un pouvoir est accordé ou un devoir imposé, le pouvoir peut être exercé et le devoir doit être accompli lorsqu'il y a lieu et selon les besoins;

e.1) lorsqu'un acte, un avis, un document ou un autre objet peut être distribué ou envoyé par courrier recommandé, il peut l'être par courrier certifié;

f) lorsqu'une formule est prescrite, des variantes qui n'en changent pas le fond ou ne sont pas de nature à induire en erreur, n'invalident pas la formule utilisée;

g) un mot indiquant le masculin comprend le féminin, ainsi que toute corporation visée par le contexte et un mot indiquant le féminin comprend le masculin ainsi que toute corporation visée par le contexte;

h) un mot au singulier comprend le pluriel, et un mot au pluriel comprend le singulier;

i) lorsqu'un mot est défini, les autres parties du discours et les temps du même mot ont des sens correspondants;

j) lorsque le délai fixé pour accomplir quoi que ce soit qui est prescrit en application de ses dispositions expire ou tombe un jour férié, ce délai est prolongé jusqu'au jour non férié suivant, et cet acte ou cette chose peut être fait ce jour-là;

k) lorsqu'un délai est fixé ou accordé pour un objet quelconque et qu'il est calculé à compter d'un jour, acte ou événement particulier, le délai ne comprend pas ce jour ou celui de cet acte ou de cet événement. S.R., c.114, art.22; Mod.e.1), g), 1978, c.31, art.1.

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23 Where an enactment authorizes or requires a document to be served or delivered by post, then, unless a contrary intention appears, service or delivery is deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. R.S., c.114, s.23.

24 Whenever the office of Chief Justice of New Brunswick is vacant any non-judicial powers or functions vested, given or conferred by statute, or by any other manner, in or upon the Chief Justice of New Brunswick may be exercised by the senior *puisne* judge of the Court of Appeal; and whenever the office of Chief Justice of The Court of Queen's Bench of New Brunswick is vacant any non-judicial powers or functions vested, given or conferred by statute, or by any other manner, in or upon the Chief Justice of The Court of Queen's Bench of New Brunswick may be exercised by the senior *puisne* judge of The Court of Queen's Bench of New Brunswick.

R.S., c.114, s.24; 1973, c.74, s.45; 1979, c.41, s.69.

25 Bonds, when required to be given by a public officer, shall be taken in the name of The Queen. R.S., c.114, s.25.

26 By-laws, rules, orders and regulations, when authorized to be made, may be altered or revoked, and others made whenever necessary, but none shall be enforced if repugnant to law. R.S., c.114, s.26.

27 Where an officer appointed by the Lieutenant-Governor in Council, and upon whom a statutory duty is imposed, is absent through illness or other cause or where there is a vacancy in the office, the Lieutenant-Governor in Council may appoint an acting official to perform the said duty. R.S., c.114, s.27.

28 Where an oath, affidavit, affirmation or declaration is directed to be made before any person or officer, that person or officer has full power and authority to administer the same, and

23 À moins qu'une intention contraire ne soit manifeste, lorsqu'un texte législatif autorise ou prescrit la signification ou la délivrance d'un document par la poste, la signification ou la délivrance est réputée être faite en adressant correctement, en payant à l'avance et en déposant à la poste une lettre contenant le document, et, sauf preuve contraire, elle est réputée avoir été faite au moment où la lettre serait délivrée dans le cours normal d'acheminement du courrier. S.R., c.114, art.23.

24 Lorsque le poste de juge en chef du Nouveau-Brunswick est vacant, les pouvoirs et fonctions non judiciaires dévolus, accordés ou conférés par une loi ou de toute autre manière au juge en chef du Nouveau-Brunswick, peuvent être exercés par le juge puîné de rang le plus élevé de la Cour d'appel; lorsque le poste de juge en chef de la Cour du Banc de la Reine du Nouveau-Brunswick est vacant, les pouvoirs et fonctions non judiciaires dévolus, accordés ou conférés par une loi ou de toute autre manière au juge en chef de la Cour du Banc de la Reine du Nouveau-Brunswick peuvent être exercés par le juge puîné de rang le plus élevé de la Cour du Banc de la Reine du Nouveau-Brunswick. S.R.

c.114, art.24; 1973, c.74, art.45; 1979, c.41, art.69.

25 Lorsqu'un fonctionnaire public est tenu de fournir un cautionnement, celui-ci doit être fourni au nom de la Reine. S.R., c.114, art.25.

26 Lorsqu'il est permis d'établir des règlements administratifs, règles, arrêtés, décrets et règlements, ceux-ci peuvent être modifiés ou révoqués, et d'autres peuvent être établis lorsque cela s'impose, mais aucun ne doit être exécuté s'il est incompatible avec la loi. S.R., c.114, art.26.

27 Lorsqu'un fonctionnaire, que nomme le lieutenant-gouverneur en conseil et auquel est imposée une fonction prescrite par la loi, est absent pour cause de maladie ou pour tout autre motif, ou lorsqu'une vacance survient à ce poste, le lieutenant-gouverneur en conseil peut appeler un fonctionnaire suppléant à remplir cette fonction. S.R., c.114, art.27.

28 Lorsqu'il est prescrit de prêter un serment, de souscrire un affidavit ou de faire une affirmation ou déclaration devant une personne ou un fonctionnaire quelconque, cette personne ou ce fonc-



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to certify to its having been made. R.S., c.114, s.28.

29 A judge of The Court of Queen's Bench of New Brunswick or a commissioner for taking affidavits to be read in The Court of Queen's Bench of New Brunswick may administer any oath, or take any affidavit to be used in any action, matter or proceeding in any court in the Province, or authorized to be administered or taken by any law in force in the Province. R.S., c.114, s.29; 1979, c.41, s.69.

30 Where an oath, affirmation, declaration or affidavit is required or authorized to be made by any Act, and the Act does not designate the person or officer authorized to take the same, the oath, affirmation, declaration or affidavit may be made before any justice of the peace in and for the county where the same is made, except where the same is to be used in The Court of Queen's Bench of New Brunswick, or in the Court of Divorce and Matrimonial Causes, or in a probate court for a purpose other than the swearing of appraisers or attesting to inventories or to accounts rendered to executors. R.S., c.114, s.30; 1979, c.41, s.69.

31 Where a court, commissioner or person is authorized to take evidence under oath, such oath may be administered and certified to by the judge of the court, commissioner or person, or if there are two or more of such commissioners or persons then by any one of them. R.S., c.114, s.31.

32 No Act impairs or adversely affects the rights of the Crown unless it is expressly stated therein that the Crown is bound thereby. R.S., c.114, s.32.

33 Nothing in this Act excludes the application to an Act of any rule of construction applicable thereto, and not inconsistent with the provisions of this Act. R.S., c.114, s.33.

34(1) A reference in an Act or regulation by number or letter to two or more parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules, appendices or forms shall be read as including the number or letter

tionnaire a plein pouvoir et autorité pour recevoir ceux-ci et pour attester qu'ils ont été prêtés, souscrits ou faits. S.R., c.114, art.28.

29 Un juge de la Cour du Banc de la Reine du Nouveau-Brunswick ou un commissaire à la prestation des serments auprès de la Cour du Banc de la Reine du Nouveau-Brunswick peut faire prêter des serments ou recevoir des affidavits qui doivent servir dans une action, une affaire ou une procédure devant une cour de la province, ou dont une loi en vigueur dans la province autorise la prestation ou réception. S.R., c.114, art.29, 1979, c.41, art.69.

30 Lorsqu'il est prescrit ou permis par une loi de prêter serment ou de faire une affirmation ou déclaration ou de souscrire un affidavit et que la loi ne désigne pas la personne ou le fonctionnaire qui est autorisé à les recevoir, le serment, l'affirmation, la déclaration ou l'affidavit peuvent être prêtés, faits ou souscrits devant tout juge de paix du comté où ils sont prêtés, faits ou souscrits, sauf dans le cas où ils doivent être utilisés devant la Cour du Banc de la Reine du Nouveau-Brunswick, la Cour des divorces et des causes matrimoniales ou un tribunal des successions, à des fins autres que celles d'assermenter des évaluateurs ou de certifier des inventaires ou des comptes rendus aux exécuteurs testamentaires. S.R., c.114, art.30; 1979, c.41, art.69.

31 Lorsqu'une cour, un commissaire ou une personne est autorisée à recevoir des dépositions sous serment, le juge, le commissaire ou la personne ou, s'il y a deux ou plusieurs commissaires ou personnes, l'un d'entre eux peut faire prêter et attester le serment. S.R., c.114, art.31.

32 Nulle loi ne porte atteinte aux droits de la Couronne ni n'a d'effets défavorables sur ceux-ci sauf s'il est expressément stipulé que la Couronne est liée par cette loi. S.R., c.114, art.32.

33 Aucune disposition de la présente loi n'exclut l'application à une loi d'une règle d'interprétation qui s'y applique et qui n'est pas incompatible avec les dispositions de la présente loi. S.R., c.114, art.33.

34(1) Un renvoi dans une loi ou un règlement par numéro ou lettre, à deux ou plusieurs parties, divisions, articles, paragraphes, alinéas, sous-alinéas, dispositions, sous-dispositions, annexes, appendices ou formules, doit s'interpréter comme



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first mentioned and the number or letter last mentioned.

34(2) A reference in an Act or regulation to a part, division, section, schedule, appendix or form shall be read as a reference to a part, division, section, schedule, appendix or form of the Act or regulation in which the reference occurs.

34(3) A reference in an Act or regulation to a subsection, paragraph, subparagraph, clause or subclause shall be read as a reference to a subsection, paragraph, subparagraph, clause or subclause of the section, subsection, paragraph, subparagraph or clause, as the case may be, in which the reference occurs.

34(4) A reference in an Act to regulations shall be read as a reference to regulations made under the Act in which the reference occurs. R.S., c.114, s.34; 1958, c.40, s.3; 1973, c.74, s.45.

35 The numbering of an Act printed by or by authority of the Queen's Printer, shall be deemed as much a part thereof as if enacted; and capital letters and numbers inserted in the sections shall be taken as referring to forms in the schedules having the like letters or numbers at the head thereof, and shall, with the forms, letters, numbers, and matters connected therewith, explain the meaning and form a part of such sections. R.S., c.114, s.35.

36 Every regulation made or to be made by the Lieutenant-Governor in Council under any Act in so far as it is not inconsistent with the Act under which it is made, has the same force and effect as if embodied in an Act of the Legislature. R.S., c.114, s.36.

37 In every enactment and regulation

(a) wherever the words "Queen" or "Her Majesty", or any derivative of the said words forming part of the name or title of any court or division thereof, or of any office, officer, or other functionary, appear, the said words shall,

renfermant le numéro ou la lettre en premier lieu mentionnés et le numéro ou la lettre en dernier lieu mentionnés.

34(2) Un renvoi dans une loi ou un règlement à quelque partie, division, article, annexe, appendice ou formule doit s'interpréter comme un renvoi à la partie, division, article, annexe, appendice ou formule de la loi ou du règlement où se trouve le renvoi.

34(3) Un renvoi dans une loi ou un règlement à quelque paragraphe, alinéa, sous-alinéa, disposition ou sous-disposition doit s'interpréter comme un renvoi à un paragraphe, alinéa, sous-alinéa, disposition ou sous-disposition de l'article, du paragraphe, de l'alinéa, du sous-alinéa ou de la disposition, selon le cas, où se trouve le renvoi.

34(4) Un renvoi dans une loi à des règlements doit s'interpréter comme un renvoi aux règlements établis en application de la loi où se trouve le renvoi. S.R., c.114, art.34; 1958, c.40, art.3; 1973, c.74, art.45.

35 La numérotation d'une loi publiée par l'Imprimeur de la Reine, ou sous son autorité, est réputée faire partie de la loi au même titre que si elle avait été édictée; les majuscules et les numéros insérés dans les articles sont considérés comme des renvois aux formules contenues dans les annexes qui portent les mêmes lettres ou numéros en en-tête, et, au même titre que les formules, lettres, numéros et affaires y afférentes, elles expliquent le sens de ces articles et en font partie. S.R., c.114, art.35.

36 Tout règlement établi ou devant être établi par le lieutenant-gouverneur en conseil en application d'une loi quelconque, dans la mesure où il n'est pas incompatible avec la loi en application de laquelle il est établi, a la même force obligatoire et les mêmes effets que s'il était incorporé dans une loi de la Législature. S.R., c.114, art.36.

37 Dans tout texte législatif et dans tout règlement,

a) lorsque les mots «Reine» ou «Sa Majesté» ou tout dérivé de ceux-ci, faisant partie du nom ou du titre d'une cour ou d'une division d'une cour, ou d'une charge, du titulaire d'une charge ou d'un autre fonctionnaire, se rencontrent : ils

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when the reigning sovereign is a King, be read and construed as the corresponding form of the words "King" and "His Majesty" respectively;

(b) wherever the words "King" or "His Majesty", or any derivative of the said words forming part of the name or title of any court or division thereof, or of any office, officer, or other functionary, appear, the said words shall, when the reigning sovereign is a Queen, be read and construed as the corresponding form of the words "Queen" and "Her Majesty" respectively. R.S., c.114, s.37.

#### CERTAIN WORDS AND PHRASES — MEANING AND EFFECT OF

38 In every enactment and regulation,

"Act" includes "Chapter";

"Assembly" means the Legislative Assembly;

"Assizes" includes Courts of Oyer and Terminer and general Gaol Delivery;

"Authorized Trustee Investment" means an investment authorized by the *Trustees Act*;

"Bank" or "Chartered Bank" means a bank to which *The Bank Act*, chapter B-1 of the Revised Statutes of Canada, 1970, applies, and includes a branch, agency, and office of a bank;

"British subject" includes Canadian citizen;

"commencement of this Act" or "passing of this Act" means the time when the Act comes into force;

"conveyance" means any instrument by which a freehold or leasehold estate, or other interest in real estate, may be transferred or affected;

"county" includes city and county; and whenever any county or parish is bounded by a sea, bay, gulf or river, its side lines shall extend into such sea, bay, gulf or river to the boundary of the Province or of the adjoining parish or county;

"Court of Appeal" means The Court of Appeal of New Brunswick;

"estate" or "property" means real and personal estate; and "real estate," "land" or "lands"

doivent, quand le souverain régnant est un Roi, se lire et s'interpréter comme la forme correspondante des mots «Roi» et «Sa Majesté»;

b) lorsque les mots «Roi» ou «Sa Majesté», ou tout dérivé de ceux-ci, faisant partie du nom ou du titre d'une cour ou d'une division d'une cour, ou d'une charge, du titulaire d'une charge ou d'un autre fonctionnaire, se rencontrent, ils doivent, quand le souverain régnant est une Reine, se lire et s'interpréter comme la forme correspondante des mots «Reine» et «Sa Majesté». S.R., c.114, art.37.

#### SENS ET EFFETS DE CERTAINES EXPRESSIONS ET LOCUTIONS

38 Dans tout teste législatif et dans tout règlement

«acte de transfert» désigne un instrument par lequel un droit de tenure libre ou à bail, ou un autre droit sur des biens réels, peut être transféré ou affecté;

«année» désigne une période de douze mois consécutifs, et «année civile» désigne la période allant du 1<sup>er</sup> janvier d'une année au dernier jour de décembre de la même année, inclusivement;

«Assemblée» désigne l'Assemblée législative;

«Assemblée législative» désigne l'Assemblée législative du Nouveau-Brunswick;

«assises» comprend les cours appelées *Courts of Oyer and Terminer and general Goal Delivery*;

«aux présentes» et «des présentes» employés dans un article, renvoient au texte législatif en entier, et non à cet article seulement;

«banque» ou «banque à charte» désigne une banque à laquelle s'applique la *Loi sur les Banques*, Chapitre B-1 des Statuts révisés du Canada de 1970, et comprend une succursale, une agence ou un bureau d'une banque;

«biens» désigne les biens réels et personnels; et «biens réels», «bien-fonds» ou «biens-fonds» comprennent les biens-fonds, maisons, tènements et héritages, et tous les droits sur ceux-ci et y accessoires;

«caution» désigne une caution suffisante;

«cédant» comprend toute personne qui transfère, et «cessionnaire» toute personne à laquelle est

### *Interpretation Act*

includes lands, houses, tenements and hereditaments, all rights thereto and incident therein;

“executor” includes administrator;

“folio” means one hundred words;

“goods” includes chattels and every description of personal property;

“Governor-General” means the Governor-General of Canada or other chief executive officer or administrator carrying on the Government of Canada on behalf, and in the name, of The Queen, by whatever title she is designated;

“Governor-General in Council” means the Governor-General of Canada, acting by and with the advice and consent of, or in conjunction with, The Queen’s Privy Council for Canada;

“grantor” includes every person from whom, and “grantee” every person to whom, any freehold estate or interest passes by deed;

“herein” and “hereof” used in any section shall relate to the whole enactment and not only to the section;

“Her Majesty”, “His Majesty”, “the Queen”, “the King” or “the Crown” means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;

“highway” or “road” means any public highway, road or bridge;

“holiday” includes Sunday, New Year’s Day, Good Friday, Easter Monday, Dominion Day, Christmas Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, Victoria Day, New Brunswick Day, Labour Day, and any day appointed by any Statute in force in the Province or by Proclamation of the Governor-General or of the Lieutenant-Governor as a general holiday within the Province, and whenever a holiday other than Sunday falls on a Sunday, the expression “holiday” includes the following day; 1975, c.31, s.1.

“issue” means the lineal descendants of the ancestor;

“justice” or “magistrate” means a justice of the peace;

transféré, un droit de tenure libre ou autre droit par un acte scellé;

«comté» comprend la cité et le comté; lorsqu’un comté ou une paroisse est bornée par une mer, une baie, un golfe ou une rivière, ses limites s’étendent dans la mer, la baie, le golfe ou la rivière jusqu’aux limites de la province ou de la paroisse ou du comté adjacent;

«Cour d’appel» désigne la Cour d’appel du Nouveau-Brunswick;

«descendance» désigne les descendants d’une personne en ligne directe;

«deux juges de paix» désigne deux juges de paix ou plus réunis et agissant ensemble;

«doit» exprime une obligation, et «peut» une faculté et un pouvoir;

«écrit» ou tout terme ayant le même sens, comprend les mots imprimés, peints, gravés, lithographiés, photographiés, ou représentés ou reproduits par tout mode de représentation ou de reproduction de mots sous une forme visible;

«entrée en vigueur de la présente loi» ou «adoption de la présente loi» désigne la date à laquelle la loi entre en vigueur;

«exécuteur testamentaire» comprend l’administrateur;

«folio» signifie cent mots;

«fonctionnaire public» comprend toute personne occupée dans la fonction publique de la province et qui est autorisée, en vertu d’un texte législatif ou d’un règlement, à faire ou à faire exécuter une chose ou à exercer un pouvoir ou à laquelle une obligation est imposée;

«garantie» désigne une garantie suffisante;

«Gouverneur général» désigne le Gouverneur général du Canada ou tout autre chef administratif ou administrateur exerçant le gouvernement du Canada pour le compte et au nom de la Reine, quelque soit le titre sous lequel elle est désignée;

«gouverneur général en conseil» désigne le gouverneur général du Canada, agissant sur l’avis et du consentement du Conseil privé de la Reine pour le Canada, ou de concert avec ce dernier;



### *Loi d'interprétation*

“Legislative Assembly” means the Legislative Assembly of New Brunswick;

“Legislature” means the Lieutenant-Governor acting by and with the advice and consent of the Legislative Assembly;

“Lieutenant-Governor” means the Lieutenant-Governor of the Province or the chief executive officer or administrator carrying on the Government of the Province on behalf and in the name of The Queen, by whatever title she is designated;

“Lieutenant-Governor in Council” means the Lieutenant-Governor acting by and with the advice of the Executive Council of the province;

“medical practitioner” means a person duly registered under the laws of the Province as authorized to practise medicine in the Province, and includes a medical officer of Her Majesty’s armed forces serving in the Province;

“mentally incompetent person” means a person

(a) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or

(b) who is suffering from such a disorder of the mind,

that he requires care, supervision and control for his protection or welfare or for the protection of others or for the protection of his property;

“month” means calendar month;

“now” and “next” shall be construed as having reference to the time when the Act was presented for the assent of the Lieutenant-Governor;

“oath” or “affidavit,” in the case of a person for the time being allowed or required by law to affirm or declare instead of swearing, includes affirmation and declaration and the word “swear” in the like case includes “affirm” and “declare;” and “sworn” includes “affirmed” and “declared;”

“parish” includes any municipality that is within the limits of a parish;

“person” or “party” includes a corporation, partnership or society and the heirs, executors, administrators or other legal representatives of a person;

«incapable mental» désigne une personne

a) dont le développement des facultés mentales est arrêté ou incomplet par suite de facteurs congénitaux ou d'une maladie ou d'un traumatisme, ou

b) qui est atteinte de troubles des facultés mentales,

à un degré tel qu'elle nécessite l'application d'un régime de soins, de surveillance et de contrôle pour sa propre protection ou son bien-être ou pour la protection d'autrui ou de ses biens;

«jour férié» comprend le dimanche, le jour de l'an, le vendredi saint, le lundi de Pâques, la fête du Dominion, le jour de Noël, l'anniversaire du souverain régnant ou le jour fixé pour la célébration, le jour de Victoria, la fête du Nouveau-Brunswick, la fête du Travail, et tout jour fixé par une loi en vigueur dans la province ou par proclamation du Gouverneur général ou du Lieutenant-gouverneur comme jour férié pour toute la province, et lorsqu'un jour férié autre qu'un dimanche tombe un dimanche, l'expression «jour férié» comprend le jour suivant; 1975, c.31, art.1.

«juge de paix» ou «magistrat» désigne un juge de paix;

«la province» désigne la province du Nouveau-Brunswick;

«Législature» désigne le Lieutenant-gouverneur agissant sur l'avis et du consentement de l'Assemblée législative;

«Lieutenant-gouverneur» désigne le Lieutenant-gouverneur de la province ou le chef administratif ou administrateur qui exerce le gouvernement de la province pour le compte et au nom de la Reine, quelque soit le titre sous lequel elle est désignée;

«lieutenant-gouverneur en conseil» désigne le Lieutenant-gouverneur agissant sur l'avis du Conseil exécutif de la province;

«loi» comprend «chapitre»;

«maintenant» ou «prochain» doit s'interpréter comme se rapportant à la date à laquelle la loi a été présentée à la sanction du Lieutenant-gouverneur;

### *Interpretation Act*

“Province” means the Province of New Brunswick;

“public officer” includes any person in the public service of the province who under an enactment or regulation is authorized to do or enforce the doing of any act or thing or to exercise any power or upon whom any duty is imposed;

“representatives” may mean executors and administrators;

“river” includes creek, stream or brook;

“security” means sufficient security;

“shall” is to be construed as imperative, and “may” as permissive and empowering;

“ship” or “vessel” means any kind of vessel, or boat, propelled by sails, steam, gasoline or otherwise;

“surety” means a sufficient surety;

“town” means incorporated town;

“two justices” means two or more justices of the peace assembled and acting together;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland; and “United States” means the United States of America; and generally the name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party, or thing means such country, place, body, corporation, society, officer, functionary, person, party or thing, although such name may not be the formal and extended designation thereof;

“will” includes codicil;

“writing,” or “written,” or any term of like import includes words printed, painted, engraved, lithographed, photographed or represented or reproduced by any mode of representing or reproducing words in a visible form;

“year” means twelve consecutive months; and “calendar year” means the period from the first day of January to the last day of December then following, inclusive. R.S., c.114, s.38; 1956, c.41, s.1; 1966, c.67, s.1; 1979, c.41, s.69; 1980, c.C-2.1, s.155.

«médecin» désigne une personne régulièrement inscrite en vertu des lois de la province comme étant autorisée à exercer la médecine dans la province et comprend un médecin militaire des forces armées de Sa Majesté en service dans la province;

«mois» désigne un mois civil;

«navire» ou «bâtiment» désigne toute sorte de bâtiment ou de bateau, mû par des voiles, par la vapeur, par l'essence ou autrement;

«objets» ou «marchandises» comprend tous les biens personnels, quels qu'ils soient;

«paroisse» comprend toute municipalité qui se trouve dans les limites d'une paroisse;

«personne» ou «partie» comprend une corporation, une société en nom collectif, une société et les héritiers, exécuteurs testamentaires, administrateurs ou autres représentants légaux d'une personne;

«placement permis aux fiduciaires» désigne un placement autorisé par la *Loi sur les fiduciaires*;

«représentants» peut désigner les exécuteurs testamentaires ou les administrateurs;

«rivière» ou «fleuve» comprend une crique, un cours d'eau ou un ruisseau;

«route» ou «chemin» désigne toute route publique, tout chemin ou pont;

«Royaume-Uni» désigne le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord; et «États-Unis» désigne les États-Unis d'Amérique; en général, le nom communément donné à un pays, un lieu, un organisme, une corporation, une société, un officier, un fonctionnaire, une personne, une partie ou une chose, désigne le pays, le lieu, l'organisme, la corporation, la société, l'officier, le fonctionnaire, la personne, la partie ou la chose ainsi nommée même si ce nom n'est pas l'appellation officielle et complète de celui-ci;

«Sa Majesté», «la Reine», «le Roi» ou «la Couronne» désigne le souverain du Royaume-Uni, du Canada et de Ses autres royaumes et territoires, et chef du Commonwealth;

«serment» ou «affidavit», dans le cas d'une personne qui est, à l'époque considérée, autorisée ou requise par la loi de faire une affirmation ou une déclaration au lieu d'un serment, comprend

*Loi d'interprétation*

une affirmation et une déclaration, et, dans ce cas, le mot «jure» ou l'expression «déclare sous serment» comprend «affirme» et «déclare», et l'expression «fait sous serment» ou «déclaré sous serment» comprend «affirmé» et «déclaré»;

«sujet britannique» comprend un citoyen canadien;

«testament» comprend le codicille;

«ville» désigne une ville constituée en municipalité. S.R., c.114, art.38; 1956, c.41, art.1; 1966, c.67, art.1; 1979, c.41, art.69; 1980, c.C-2.1, art.155.

**39(1)** In an Act or document an Act may be cited by reference to its chapter number in the Revised Statutes, by reference to its chapter number in the volume of Acts for the year or regnal year in which it was enacted, or by reference to its long title or short title with or without reference to its chapter number.

**39(2)** A citation of or reference to an enactment shall be deemed to be a citation of or reference to the enactment as amended. 1973, c.74, s.45.

**39(1)** Dans une loi ou un document, la citation d'une loi peut se faire par la mention de son numéro de chapitre dans les Lois révisées, par la mention de son numéro de chapitre dans le recueil des lois de l'année ou de l'année du règne où elle a été édictée ou par la mention de son titre complet ou abrégé, avec ou sans mention de son numéro de chapitre.

**39(2)** Une citation ou mention d'un texte législatif est réputée être une citation ou mention du texte législatif tel qu'il a été modifié. 1973, c.74, art.45.





JUDICIAL POWER



POUVOIR JUDICIAIRE





## JUDICIAL POWER

### Introduction

According to sections 92(14) and 101 of the British North America Act, the judicial power in New Brunswick is made up of federal as well as provincial courts, with the latter subdivided into courts whose judges are appointed by the federal government and those whose judges are appointed by the province. These federal as well as provincial courts are as follows:

#### A. Federal courts:

1. Supreme Court of Canada
  2. Federal Court of Canada (Trial and Appeal Divisions)
- Note: Statutes creating these two courts are reproduced in part in volume 2 of this collection, pp. G11, and subs.

#### B. Provincial courts:

- a) Whose judges are appointed federally:
  1. Court of Appeal of New Brunswick
  2. Court of Queen's Bench of New Brunswick
  3. Court of Divorce and Matrimonial Causes.
- b) Whose judges are appointed provincially:
  1. Probate Court
  2. Provincial Court
  3. Juvenile Court

Statutes creating each of the provincial courts mentioned above are reproduced in part below. Also reproduced in part is the Judicature Act which is the constitutive act of the Court of Appeal and the Court of Queen's Bench of New Brunswick, and which contains the main provisions of the Family Law Jurisdiction Act (S.N.B. 1978, c.F-2.1, as amended). The Judges Disqualification Removal Act, which applies only to judges of these two courts, is also reproduced.

In addition to these statutes, the Federal Courts Jurisdiction Act reproduced above under "General Constitutional Acts" should also be consulted. The federal Judges Act reproduced in part in volume 2 of this collection, pp. G47 and subs., applies to provincial judges of New Brunswick who are nominated by the federal government.

For more information regarding the judicial power in general, the unitary and integrated character of the Canadian judicial structure, the principle of independence of the judiciary, and the role played by judges in Canada, the user should consult volume 2 of this collection, pp. G5 to G7.

Selected references:

1. Read, Horace E., and Barker, John M., The Judicial Systems of the Common Law Provinces and Federal Courts of Canada, Halifax, Dalhousie Law School, 1963?, chapter on "The Courts of New Brunswick", pp. [56-64].
2. Debicki, M., "Courts," in Bellamy, David J., and others, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 369-380.
3. New Brunswick, Committee on Administration of Justice in New Brunswick, Report, Fredericton, Queen's Printer 1959, 32 p.
4. McKeown, C.J., "The First Supreme Court of New Brunswick," (1917), 37 Canadian Law Times 830-838.

## POUVOIR JUDICIAIRE

### Introduction

Suivant les art. 92(14) et 101 de l'A.A.N.B., le pouvoir judiciaire au Nouveau-Brunswick se compose à la fois de tribunaux fédéraux et de tribunaux provinciaux. Les tribunaux provinciaux se subdivisent à leur tour en tribunaux dont les juges sont nommés par l'état fédéral et en tribunaux dont les juges sont nommés par la province. Ces tribunaux, tant fédéraux que provinciaux, sont les suivants:

#### A. Tribunaux fédéraux:

1. Cour suprême du Canada
2. Cour fédérale du Canada

Note: Les lois constitutives de ces deux cours sont partiellement reproduites aux pages G12 et suivantes du volume 2 de cette collection.

#### B. Tribunaux provinciaux:

- a) Tribunaux provinciaux dont les juges sont nommés par l'état fédéral:
  1. Cour d'appel du Nouveau-Brunswick
  2. Cour du Banc de la Reine du Nouveau-Brunswick
  3. Cour des divorces et des causes matrimoniales
- b) Tribunaux provinciaux dont les juges sont nommés par la province:
  1. Tribunal des successions
  2. Cour provinciale
  3. Tribunal des jeunes

Des extraits de la loi constitutive de chaque tribunal provincial mentionné plus haut sont reproduits ci-après. Il en est de même de la Loi sur l'organisation judiciaire qui sert de loi constitutive à la Cour d'appel et à la Cour du Banc de la Reine du Nouveau-Brunswick et qui renferme les principales dispositions de la Loi sur l'exercice des compétences dans le domaine du droit de la famille (L.N.-B., 1978, c. F-2.1 et ses modifications). Est également reproduite la Loi sur la non-récusation des juges qui ne s'adresse qu'aux juges de la Cour d'appel et de la Cour du Banc de la Reine.

Outre les lois reproduites dans ce chapitre, il y a également lieu de consulter la Loi sur la compétence des tribunaux fédéraux reproduite au chapitre "Lois constitutionnelles générales" du présent fascicule. La Loi sur les juges adoptée



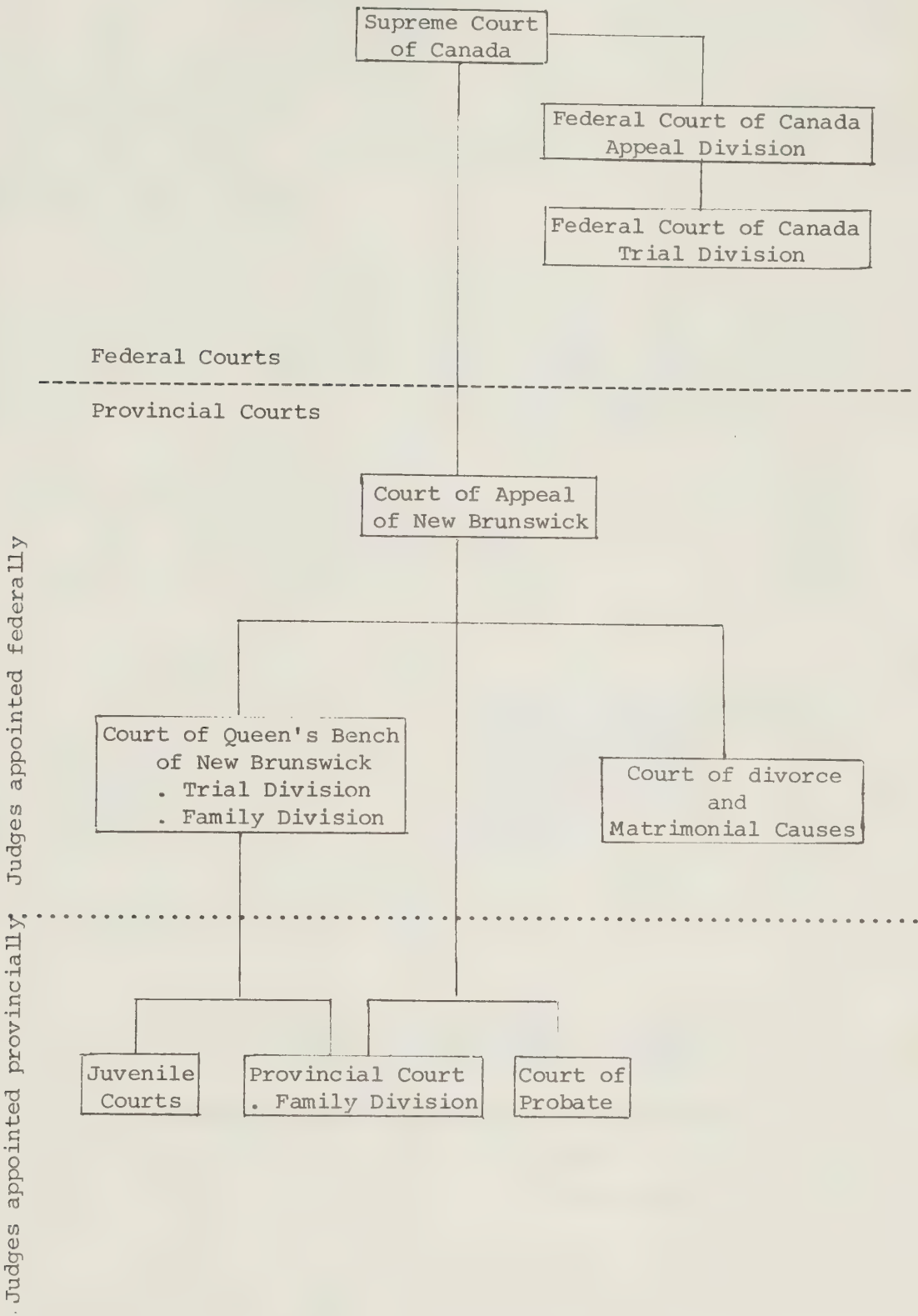
par le législateur fédéral et reproduite partiellement aux pages G48 et suivantes du volume 2 de cette collection, s'applique aussi aux juges des tribunaux du Nouveau-Brunswick nommés par l'état fédéral.

De plus amples renseignements sur l'ensemble du pouvoir judiciaire, sur le caractère unitaire et intégré de la hiérarchie judiciaire et sur l'indépendance et le rôle des juges au Canada, sont contenus aux pages G8 et suivantes du volume 2 de cette collection.

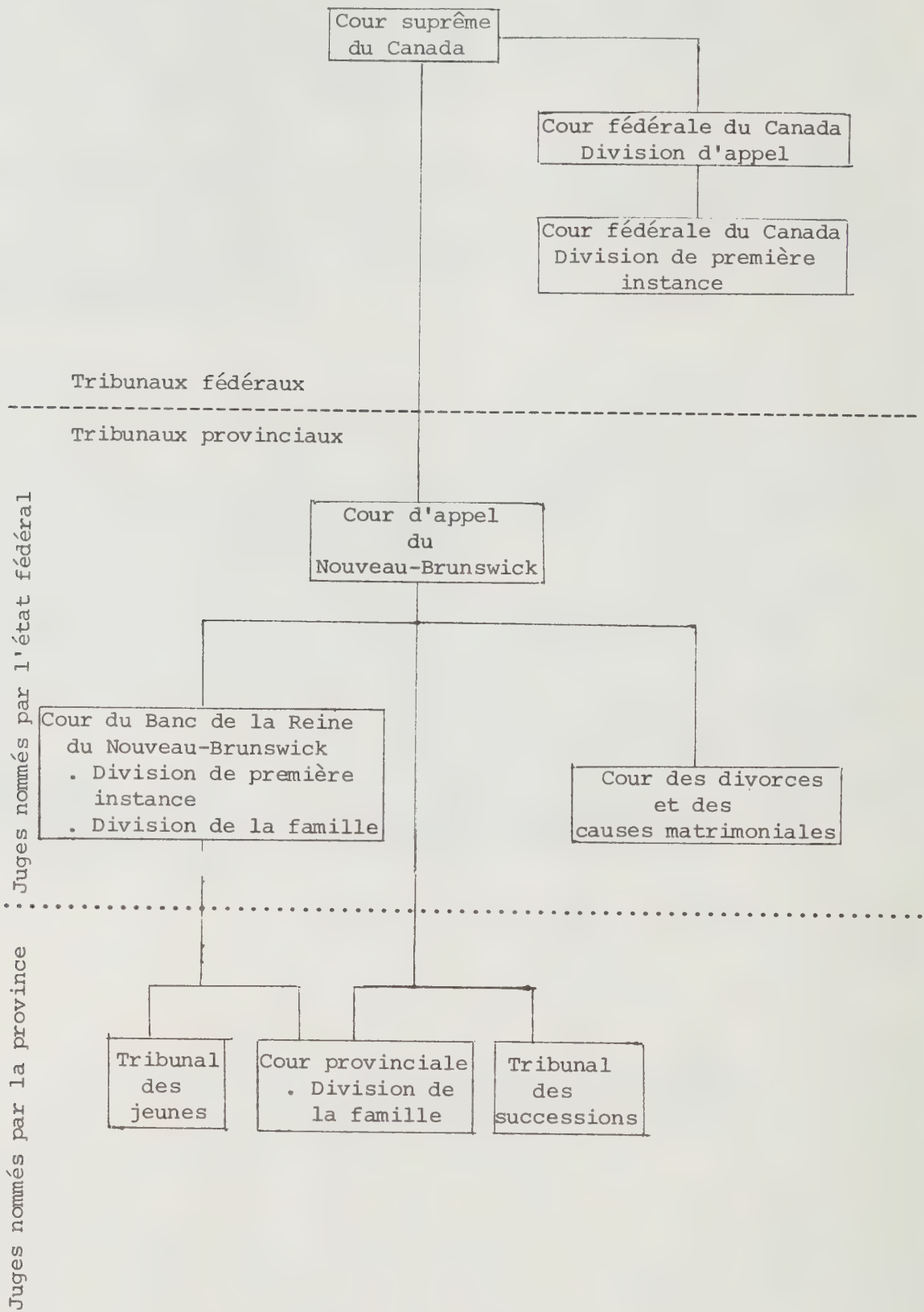
### Sources choisies

- Read, Horace E., et Barker, John M., The Judicial Systems of the Common Law Provinces and Federal Courts of Canada, Halifax, Dalhousie Law School, 1963?, Chapter "The Courts of New Brunswick", pp. [56-64].
- Debicki, M., "Courts", dans David J. Bellamy et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 369-380
- New Brunswick, Committee on Administration of Justice in New Brunswick, Report, Fredericton, Queen's Printer 1959, 32 p.
- McKeown, C.J., "The First Supreme Court of New Brunswick", (1917) 37 Canadian Law Times, pp. 830-838.

The Judicial System of New Brunswick



Le système judiciaire du Nouveau-Brunswick





## JUDICATURE ACT

R.S.N.B. 1973, c. J-2

with amendments to date, including 1980, c. 28

Note:

This statute regulates the operation of the Court of Appeal and the Court of Queen's Bench of New Brunswick. These two courts continue after September 4, 1979, the two divisions (Appeal and Queen's Bench) of the Supreme Court of New Brunswick. The Supreme Court was originally created in 1784, and underwent a number of reorganisations, the last one in 1966, when the Chancery Division was abolished (S.N.B. 1966, c. 70). It merged with the County Court in 1979 (See S.N.B. 1979, c. 41, as amended).

The Court of Appeal and the Court of Queen's Bench are courts of common law and equity with jurisdiction in civil and criminal matters. The judges of these two courts are appointed by the federal government and their status is governed by a federal statute, the Judges Act (R.S.C. 1970, c. J-1), reproduced in volume 2 of this collection, pp. G47, and subs, and a provincial statute, the Judges Disqualification Removal Act, reproduced below.

The Court of Appeal (formerly the Appeal Division of the Supreme Court) consists of the Chief Justice of New Brunswick, four other judges, and former judges acting as supernumerary judges. It has appellate jurisdiction from other courts in the province. Appeals from this court lie to the Supreme Court of Canada, the general appeal court of last resort for the whole of Canada.

The Court of Queen's Bench consists of the Chief Justice of the Court, fourteen other judges, and former judges acting as supernumerary judges. It is divided into the Trial Division and the Family Division. The Trial Division has general and original jurisdiction in matters specified in section 9 of this statute. The

Family Division has jurisdiction in matters set out in Schedule A, and for such purposes it may also exercise the jurisdiction vested in the Court of Divorce and Matrimonial Causes, the Provincial Court, a Juvenile Court and a Court of Probate, as well as under any provision set out in Schedule B. In pursuance of various statutes, the Court of Queen's Bench can hear appeals from decisions of lower courts in the province, and appeals from its decisions lie to the Court of Appeal of New Brunswick.

The Judicature Act contains 85 sections and 2 schedules, and only provisions having constitutional law interest are reproduced below.

## LOI SUR L'ORGANISATION JUDICIAIRE

L.R.N.-B. 1973, c. J-2

et ses modifications à jour, y inclus 1980, c. 28

Note:

Cette loi régit les activités de la Cour d'appel et de la Cour du Banc de la Reine du Nouveau-Brunswick. Ces deux tribunaux remplacent respectivement les divisions d'appel et du Banc de la Reine de la Cour suprême de cette province depuis le 4 septembre 1979, date de la fusion de la Cour de comté et de la Cour suprême (L.N.-B. 1979, c. 41). Ce dernier tribunal avait été établi en 1784 et avait été réorganisé à diverses reprises, dont la dernière fois en 1966 au moment de l'abolition de sa division de la chancellerie.

La Cour d'appel et la Cour du Banc de la Reine du Nouveau-Brunswick sont des tribunaux de droit commun et d'équité et ont toutes deux compétence en matière civile et criminelle. Les juges de ces deux tribunaux d'archives sont nommés par l'état fédéral et sont soumis à la loi fédérale intitulée Loi sur les juges, reproduite en partie aux pages G48 et suivantes du volume 2 de cette collection, de même qu'à la loi provinciale intitulée Loi sur la non-récusation des juges, reproduite ci-après.

La Cour d'appel (l'ancienne division d'appel de la Cour suprême) se compose du juge en chef du Nouveau-Brunswick, de quatre autres juges et des anciens juges de cette cour qui agissent comme juges surnuméraires. Elle constitue le tribunal général d'appel pour la province. Ses décisions peuvent cependant faire l'objet d'un appel à la Cour suprême du Canada, le tribunal général d'appel de dernier ressort pour l'ensemble du pays.

La Cour du Banc de la Reine se compose d'un juge en chef, de quatorze autres juges et des anciens juges de la cour qui agissent à titre de juges surnuméraires. Elle comprend une division de première instance et une division de la famille. La division de première instance exerce une compétence générale et de première instance dans les domaines mentionnés à l'art. 9 de la présente loi. La division de la famille a compétence sur les matières énumérées à l'Annexe A de la présente loi et, à cette fin, elle exerce la compétence dévolue à la Cour des divorces et des causes matrimoniales, à la Cour



provinciale, au tribunal des jeunes et au tribunal des successions; elle peut également tirer sa compétence des lois mentionnées à l'Annexe B de la loi. En vertu de diverses lois, la Cour du Banc de la Reine peut, en outre, entendre l'appel de décisions de tribunaux d'instance inférieure; ses décisions peuvent alors être portées en appel devant la Cour d'appel du Nouveau-Brunswick.

La présente loi renferme 85 articles et deux annexes. Seules les dispositions présentant un intérêt en droit constitutionnel sont reproduites.

## Judicature Act

## Loi sur l'organisation judiciaire

### 1 In this Act and in the Rules

“Chief Justice” means the Chief Justice of New Brunswick or the Chief Justice of the Court of Queen’s Bench, as the subject or context requires, and wherever the words “Chief Justice of New Brunswick” or the words “Chief Justice”, meaning Chief Justice of New Brunswick, appear in this Act or the Rules of Court, the same shall, during a vacancy in the office of the Chief Justice of New Brunswick or during his absence, be deemed to include the *puisne* judge of the Court of Appeal who has the most seniority and who is not absent; and whenever the words “Chief Justice of the Court of Queen’s Bench” or the words “Chief Justice”, meaning the Chief Justice of the Court of Queen’s Bench, appear in this Act or in the Rules of Court, the same shall, during a vacancy in the office of the Chief Justice of the Court of Queen’s Bench or during his absence, be deemed to include the *puisne* judge of the Court of Queen’s Bench who has the most seniority and who is not absent; 1978, c.32, s.1; 1979, c.36, s.2.

“Court” means the Court of Appeal or the Court of Queen’s Bench, as the subject or context requires; 1978, c.32, s.1.

“Court *en banc*” or “*en banc*” means the Court of Appeal; 1978, c.32, s.1.

“Court of Appeal” means The Court of Appeal of New Brunswick and includes a judge thereof; 1978, c.32, s.1.

“Court of Queen’s Bench” means The Court of Queen’s Bench of New Brunswick and includes a judge thereof; 1978, c.32, s.1; 1979, c.36, s.2.

“Family Division” means the Family Division of the Court of Queen’s Bench and includes a judge of the Family Division; 1978, c.32, s.1.

“judge” means the Chief Justice of New Brunswick, the Chief Justice of the Court of Queen’s Bench or any judge or supernumerary judge of the Court of Appeal or the Court of Queen’s Bench; 1978, c.32, s.1.

### 1 Dans la présente loi et dans les Règles

«Cour» désigne la Cour d’appel ou la Cour du Banc de la Reine, suivant ce que le sujet ou le contexte exige; 1978, c.32, art.1.

«Cour d’appel» signifie la Cour d’appel du Nouveau-Brunswick et s’entend d’un juge de cette cour; 1978, c.32, art.1.

«Cour en banc» ou «en banc» désigne la Cour d’appel; 1978, c.32, art.1.

«Cour du Banc de la Reine» désigne la Cour du Banc de la Reine du Nouveau-Brunswick et s’entend d’un juge de cette cour; 1978, c.32, art.1; 1979, c.36, art.2.

«Division de la famille» désigne la Division de la famille de la Cour du Banc de la Reine et comprend un juge de la Division de la famille; 1978, c.32, art.1.

«Division de première instance» désigne la Division de première instance de la Cour du Banc de la Reine et s’entend d’un juge de cette division; 1978, c.32, art.1.

«juge» désigne le juge en chef du Nouveau-Brunswick, le juge en chef de la Cour du Banc de la Reine, un juge ou un juge surnuméraire de la Cour d’appel ou de la Cour du Banc de la Reine; 1978, c.32, art.1.

«juge de la Division de la famille» comprend tout juge assurant la présidence d’une *procédure* engagée devant la Division de la famille; 1978, c.32, art.1.

«juge en chef» désigne le juge en chef du Nouveau-Brunswick ou le juge en chef de la Cour du Banc de la Reine lorsque le sujet ou le contexte l’exige et, chaque fois que les expressions «juge en chef du Nouveau-Brunswick» ou «juge en chef», désignant le juge en chef du Nouveau-Brunswick, apparaissent dans la présente loi ou dans les Règles de la Cour, ces expressions sont réputées comprendre en cas de vacance de la fonction de

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“judge of the Family Division” includes any other judge hearing and determining a proceeding in the Family Division; 1978, c.32, s.1.

“Trial Division” means the Trial Division of the Court of Queen’s Bench and includes a judge thereof. R.S., c.120, s.1; 1965, c.70, s.1; 1973, c.53, s.1; 1978, c.32, s.1.

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## CONSTITUTION OF COURT

2(1) The Supreme Court of New Brunswick as constituted before September 4, 1979, shall be continued as courts of record under the names of The Court of Appeal of New Brunswick and The Court of Queen’s Bench of New Brunswick. 1978, c.32, s.2; 1979, c.36, s.1.

2(2) The Court of Appeal shall consist of the Chief Justice of New Brunswick, four other judges, any former judge of the Court of Appeal who is a supernumerary judge and any former Chief Justice of New Brunswick who is a judge or a supernumerary judge. 1978, c.32, s.2; 1979, c.36, s.3.

2(3) The Court of Queen’s Bench shall consist of the Chief Justice of the Court of Queen’s Bench, fourteen other judges, any former judge of the Court of Queen’s Bench who is a supernumerary judge and any former Chief Justice of the Court of Queen’s Bench who is a judge or a supernumerary judge. 1978, c.32, s.2; 1979, c.36, s.3.

2(4) The Court of Queen’s Bench shall consist of two divisions, namely:

(a) the Trial Division, and

(b) the Family Division. 1978, c.32, s.2; 1979, c.36, s.3.

2(4.1) Of the judges of the Court of Queen’s Bench one shall be a judge of the Family Division.

juge en chef du Nouveau-Brunswick ou d’absence de ce dernier, le juge puîné de la Cour d’appel qui a le plus d’ancienneté et qui n’est pas absent, et chaque fois que les expressions «juge en chef de la Cour du Banc de la Reine» ou «juge en chef» désignant le juge en chef de la Cour du Banc de la Reine, apparaissent dans la présente loi ou dans les Règles de la Cour, ces expressions sont réputés comprendre, en cas de vacance de la fonction de juge en chef de la Cour du Banc de la Reine ou d’absence de ce dernier, le juge puîné de la Cour du Banc de la Reine qui a le plus d’ancienneté et qui n’est pas absent; 1978, c.32, art.1; 1979, c.36, art.2.

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## CONSTITUTION DE LA COUR

2(1) La Cour suprême du Nouveau-Brunswick telle qu’elle était établie avant le 4 septembre 1979 continue de constituer des tribunaux d’archives sous l’appellation de Cour d’appel du Nouveau-Brunswick et de Cour du Banc de la Reine du Nouveau-Brunswick. 1978, c.32, art.2; 1979, c.36, art.1.

2(2) La Cour d’appel se compose du juge en chef du Nouveau-Brunswick, de quatre autres juges, de tout ancien juge de cette cour qui est juge surnuméraire et de tout ancien juge en chef du Nouveau-Brunswick qui est juge ou juge surnuméraire. 1978, c.32, art.2; 1979, c.36, art.3.

2(3) La Cour du Banc de la Reine se compose du juge en chef de la Cour du Banc de la Reine, de quatorze autres juges, de tout ancien juge de cette Cour qui est juge surnuméraire et de tout ancien juge en chef de cette cour qui est juge ou juge surnuméraire. 1978, c.32, art.2; 1979, c.36, art.3.

2(4) La Cour du Banc de la Reine est constituée de deux divisions qui sont:

a) la Division de première instance, et

b) la Division de la famille. 1978, c.32, art.2; 1979, c.36, art.3.

2(4.1) Un des juges de la Cour du Banc de la Reine est juge de la Division de la famille.



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2(4.2) A judge of the Family Division is *ex officio* a judge of the Trial Division and shall act at the direction of the Chief Justice. 1979, c.36, s.3.

2(5) For each office of judge established under subsections (2) and (3), there is the additional office of supernumerary judge that any judge of the Courts may elect to hold upon compliance with and upon meeting the qualifications under the *Judges Act* chapter J-1 of the Revised Statutes of Canada, 1970. 1978, c.32, s.2.

2(6) For each office of Chief Justice established under subsections (2) and (3), there is established the additional office of judge that a Chief Justice may elect to hold upon compliance with and upon meeting the qualifications under the *Judges Act*, chapter J-1 of the Revised Statutes of Canada, 1970. R.S., c.120, s.2; 1954, c.49, s.1; 1958, c.43, s.1; 1963(2nd Sess.), c.24, s.1; 1965, c.23, s.1; 1966, c.70, s.2; 1971, c.42, s.1; 1973, c.53, s.2; 1975, c.32, s.1; 1978, c.32, s.2.

3(1) A judge of the Court of Queen’s Bench or the Court of Appeal shall, as soon as may be after acceptance and before entering upon the duties of his office, take an oath in the form following, that is to say,

“I,....., do swear that I will well and truly serve our Sovereign Lady, Queen Elizabeth II, in the office of .....and I will do right to all manner of people according to law, without fear or favour, affection or ill will. -So help me God.” 1978, c.32, s.3.

3(2) The oath shall be administered by the Lieutenant-Governor to the Chief Justice of New Brunswick, by the Chief Justice of New Brunswick to the Chief Justice of the Court of Queen’s Bench and to the other judges of the Court of Appeal, and by the Chief Justice of the Court of Queen’s Bench to the other judges of the Court of Queen’s Bench. R.S., c.120, s.3; 1979, c.36, s.4.

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2(4.2) Le juge de la Division de la famille est de droit juge de la Division de première instance et exerce ses fonctions ainsi que le juge en chef l’exige. 1979, c.36, art.3.

2(5) Il est établi, pour chaque poste de juge avec application des paragraphes (2) et (3), un poste de juge surnuméraire que tout juge des Cours peut décider d’occuper après être conformé et avoir satisfait aux conditions posées par la *Loi sur les juges*, chapitre J-1 des Statuts révisés du Canada de 1970. 1978, c.32, art.2.

2(6) Il est établi, pour chaque poste de juge en chef créé en application des paragraphes (2) et (3) le poste de juge qu’un juge en chef peut décider d’occuper après s’être conformé et avoir satisfait aux conditions posées par la *Loi sur les juges*, chapitre J-1 des Statuts révisés du Canada de 1970. S.R., c.120, art.2; 1954,c.49, art.1; 1958, c.43, art.1; 1963(2e sess.), c.24, art.1; 1965, c.23, art.1; 1966, c.70, art.2; 1971, c.42, art.1; 1973, c.53, art.2; 1975, c.32, art.1; 1978, c.32, art.2.

3(1) Les juges de la Cour du Banc de la Reine ou de la Cour d’appel doivent, dès que possible après avoir accepté leur nomination et avant d’entrer en fonctions, prêter le serment suivant:

«Moi,....., je jure de bien et fidèlement servir notre Souveraine, la Reine Elizabeth II, en ma qualité de ..... et de rendre justice à tous selon le droit, sans crainte, partialité ni malveillance.—Que Dieu me soit en aide». 1978, c.32, art.3.

3(2) Le juge en chef du Nouveau-Brunswick prête serment devant le Lieutenant-gouverneur, le juge en chef de la Cour du Banc de la Reine et les autres juges de la Cour d’appel devant le juge en chef du Nouveau-Brunswick, et les autres juges de la Cour du Banc de la Reine devant le juge en chef de cette dernière. S.R., c.120, art.3; 1979, c.36, art.4.

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## Loi sur l'organisation judiciaire

## COURT OF APPEAL

8(1) The Court of Appeal shall always be open. 1976, c.35, s.1; 1978, c.32, s.8.

8(2) The Court of Appeal shall have and exercise appellate jurisdiction, with such original jurisdiction as may be necessary or incidental to the determining of an appeal; and shall have all the jurisdiction and powers possessed by the Court of Appeal immediately before September 4, 1979, with appellate jurisdiction in civil and criminal causes and matters, and with jurisdiction and power to hear and determine motions and appeals respecting any judgment, order or decision of any judge of the Courts. 1978, c.32, s.8; 1979, c.36, s.1.

8(3) An appeal to the Court of Appeal may be taken by any party from any judgment, order or decision

(a) made in the Court of Queen's Bench or by a judge thereof,

(b) made by a judge of the Court of Queen's Bench who is *persona designata* by the provisions of an Act that does not expressly deal with the matter of an appeal from that judgment, order or decision, or

(c) that is stated in any other Act as being subject to an appeal to the Court of Appeal

or from any other judgment, order or decision that might heretofore have been appealed to the Court of Appeal, and unless inconsistent with the express provisions of another Act or the Rules of Court, every appeal to the Court of Appeal shall as nearly as possible follow the procedural rules for an appeal from the Court of Queen's Bench to the Court of Appeal, and the Court of Appeal in every appeal shall have the powers, including the power to extend the time for appeal, that it has in the case of an appeal from the Court of Queen's Bench. 1978, c.32, s.8; Am. a), 1979, c.36, s.7.

## COUR D'APPEL

8(1) La Cour d'appel siège en permanence. 1976, c.35, art.1; 1978, c.32, art.8.

8(2) La Cour d'appel possède et exerce une compétence en matière d'appel en plus de la compétence en première instance qui peut être nécessaire ou accessoire pour statuer sur un appel; elle possède en outre toute la compétence et tous les pouvoirs qu'avait la Cour d'appel immédiatement avant le 4 septembre 1979 avec compétence d'appel dans les causes et questions civiles et criminelles ainsi que la compétence et le pouvoir d'entendre et juger les requêtes et les appels concernant un jugement, une ordonnance ou une décision d'un juge des Cours. 1978, c.32, art.8; 1979, c.36, art.1.

8(3) Une partie peut interjeter appel devant la Cour d'appel de tout jugement, ordonnance ou décision,

a) rendu en la Cour du Banc de la Reine ou par un de ses juges,

b) rendu par un juge de la Cour du Banc de la Reine commis comme *persona designata* par les dispositions d'une loi qui ne traite pas expressément de la question d'un appel de ce jugement ou de cette ordonnance ou décision, ou

c) dont il est indiqué dans une autre loi qu'il est susceptible d'appel devant la Cour d'appel;

elle peut également appeler de tout autre jugement, ordonnance ou décision dont elle aurait pu, avant l'adoption de la présente loi, interjeter appel devant la Cour d'appel et, sauf incompatibilité avec les dispositions expresses d'une autre loi ou des Règles de la Cour, les appels portés devant la Cour d'appel doivent, autant que possible, suivre les règles de procédure applicables aux appels déferés de la Cour du Banc de la Reine à la Cour d'appel, celle-ci ayant pour chaque appel les pouvoirs, y compris celui de proroger les délais d'appel dont elle dispose en cas d'appel déferé de la Cour du Banc de la Reine. 1978, c.32, art.8; Mod. a), 1979, c.36, art.7.



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8(4) The Court of Appeal shall sit in the City of Fredericton, and may sit in other locations, at such places and times as the Court requires, all as determined by the Chief Justice subject to the Rules of Court. 1978, c.32, s.8; 1979, c.36, s.7.

8(5) Every appeal, motion or application to the Court of Appeal shall, unless otherwise provided in this Act or the Rules of Court, be heard before not fewer than three judges sitting together, but the death, withdrawal, resignation, removal or inability to act of a judge after the commencement of a hearing shall not affect the jurisdiction of the Court if the appeal, motion or application is finally disposed of by not fewer than two judges, in which case their determination shall have the same force and effect as if made by the whole Court. 1978, c.32, s.8; 1979, c.36, s.7.

8(6) It is not necessary for all the judges who have heard the argument in any case to be present in order to constitute the Court for delivering judgment in that case; and where any judge who has heard the argument is not present at the time when judgment is delivered, his judgment may be announced or read by one of the other judges, and shall have the same effect as if he were present. 1978, c.32, s.8.

8(6.1) Notwithstanding subsection (5), where the argument in any case has been heard before a judge and the judge is appointed to any other court or for any other reason ceases to hold office, he may at any time within six months of ceasing to hold office deliver judgment or make an order in the case, and, in a criminal proceeding, exercise any power of a judge of the Court of Appeal in such proceeding. 1980, c.28, s.1.

8(7) No judge shall sit on the hearing of an appeal from any judgment or order made by him, or on the hearing of a motion for a new trial on any cause or matter tried before him, with or without a jury. 1978, c.32, s.8.

8(8) Where any judge of the Court of Appeal is unable to sit or take part in consequence of the

8(4) La Cour d'appel siège en la Cité de Fredericton, mais peut siéger en d'autres endroits, aux temps et lieux qu'elle requiert, endroits, temps et lieux que le juge en chef fixe sous réserve des Règles de la Cour. 1978, c.32, art.8; 1979, c.36, art.7.

8(5) Les appels, requêtes ou demandes soumis à la Cour d'appel doivent, sauf disposition contraire de la présente loi ou des Règles de la Cour, être entendus par au moins trois juges siégeant ensemble, mais la mort, la mise à la retraite, la démission, la révocation ou l'incapacité à exercer ses fonctions d'un juge après le début d'une audience n'affecte pas la compétence de la Cour si l'appel, la requête ou la demande sont tranchés par au moins deux juges, leur jugement a alors la même force et le même effet que s'il avait été prononcé par l'ensemble de la Cour. 1978, c.32, art.8; 1979, c.36, art. 7.

8(6) Il n'est pas nécessaire que tous les juges qui ont entendu l'argumentation d'une affaire soient présents afin de constituer la Cour pour le prononcé du jugement en cette affaire; en cas d'absence au prononcé du jugement d'un juge qui a entendu l'argumentation, son jugement peut être donné ou lu par l'un des autres juges et a le même effet que s'il avait été présent. 1978, c.32, art.8.

8(6.1) Nonobstant le paragraphe (5), lorsqu'un juge, après l'audition des arguments d'une affaire, cesse d'exercer ses fonctions à la suite de sa nomination à une autre Cour ou de toute autre raison, il peut, dans les six mois d'une telle occurrence, délivrer un jugement ou rendre une ordonnance dans l'affaire qu'il a entendue, et dans une procédure criminelle, y exercer les pouvoirs d'un juge de la Cour d'appel. 1980, c.28, art.1.

8(7) Un juge ne peut siéger à l'audition de l'appel d'un jugement ou d'une ordonnance qu'il a lui-même rendus ni à l'audience d'une requête d'une nouvelle instruction dans une cause ou question qu'il a instruite avec ou sans jury. 1978, c.32, art.8.

8(8) En cas d'empêchement d'un juge de la Cour d'appel par suite des dispositions du paragraphe



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provisions of subsection (7), or from illness or any other reason, or in case of a vacancy in the Court, the Chief Justice, following consultation with the Chief Justice of the Court of Queen's Bench, may summon any judge of the Court of Queen's Bench to sit and act in the place of such other judge, or in the place of any judge whose office has become vacant, and it is the duty of any judge so summoned to attend and, while so sitting and acting, that judge has all the jurisdiction, power and authority of a judge of the Court of Appeal. 1976, c.35, s.1; 1978, c.32, s.8.

(7) ou pour cause de maladie ou pour toute autre cause ou en cas de vacance d'un poste de juge au sein de la Cour, le juge en chef ou, s'il est malade ou absent ou si son poste est vacant, le doyen des juges de la Cour après consultation avec le juge en chef de la Cour de Banc de la Reine, peut ordonner à un juge de la Cour du Banc de la Reine de siéger en remplacement du juge empêché ou de celui dont le poste est devenu vacant; tout juge ainsi mandé est tenu d'assumer ces fonctions et possède, pendant qu'il les remplit, les compétences, pouvoirs et attributions d'un juge de la Cour d'appel. 1976, c.35, art.1; 1978, c.32, art.8.

8(9) All writs, precepts, rules, affidavits, notices and other papers and documents issued out of, or used in the Court of Appeal may be entitled, "In The Court of Appeal of New Brunswick". R.S., c.120, s.8; 1958, c.43, s.3; 1966, c.70, s.5; 1973, c.53, s.3; 1978, c.32, s.8.

8(9) Tous les brevets, mandats, décisions, affidavits, avis et autres pièces et documents établis ou employés par la Cour d'appel peuvent porter l'en-tête «Cour d'appel du Nouveau-Brunswick». S.R., c.120, art.8; 1958, c.43, art.3; 1966, c.70, art.5; 1973, c.53, art.3; 1978, c.32, art.8.

TRIAL DIVISION

DIVISION DE PREMIÈRE INSTANCE

9(1) Notwithstanding anything in the provisions of this or any other Act or the Rules of Court, the Trial Division shall have and exercise general and original jurisdiction in all causes and matters including jurisdiction in the following matters, namely:

9(1) Nonobstant les dispositions de la présente loi, d'une autre loi ou des Règles de la Cour, la Division de première instance possède et exerce sa compétence générale et de première instance dans toutes les causes et questions notamment dans les domaines suivants, à savoir:

(a) all causes and matters, civil and criminal, that were within the exclusive cognizance of the Supreme Court in the exercise of its original common law jurisdiction, before the commencement of the *Judicature Act*, 1909;

a) dans toutes les causes et questions civiles et criminelles qui étaient du ressort exclusif de la Cour suprême dans l'exercice de sa compétence de *common law* en première instance avant la date d'entrée en vigueur de la loi intitulée «*The Judicature Act*, 1909»;

(b) all causes and matters that prior to July 1, 1966, were assigned to or cognizable by the Chancery Division;

b) dans toutes les causes et questions qui, avant le 1<sup>er</sup> juillet 1966, étaient attribuées à la Division de la Chancellerie ou relevaient de sa compétence,

(c) all causes and matters that prior to September 4, 1979, were within the jurisdiction of the County Court of New Brunswick; and

c) dans toutes les causes et questions qui, avant le 4 septembre 1979, étaient du ressort de la Cour de comté du Nouveau-Brunswick; et

(d) all causes and matters that prior to September 4, 1979, were within the jurisdiction of the Queen's Bench Division of the Supreme Court. 1978, c.32, s.9; 1979, c.36, s.1.

d) dans toutes les causes et questions qui, avant le 4 septembre 1979, étaient du ressort de la Division du Banc de la Reine de la Cour suprême. 1978, c.32, art.9; 1979, c.36, art.1.

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## Judicature Act

## FAMILY DIVISION

## 11(1) In sections 11 to 11.6

“judicial district” means the judicial district in which the Family Division may exercise its jurisdiction;

“proceeding” includes any action, cause, matter petition or application. 1978, c.32, s.9.

11(2) The Chief Justice of the Court of Queen’s Bench may direct that any judge of the Trial Division may hear and determine any proceeding brought in the Family Division where for any reason a judge of the Family Division cannot act, and for such purposes each judge of the Trial Division is a judge of the Family Division. 1978, c.32, s.9.

11(3) The Family Division has the jurisdiction vested in the Trial Division. 1978, c.32, s.9.

11(4) Subject to subsection (5), the Family Division is constituted to hear and determine proceedings with respect to matters set out in Schedule A, and for such purposes the Family Division may also exercise the jurisdiction vested in the Court of Divorce and Matrimonial Causes, the Provincial Court of New Brunswick, a Juvenile Court and a Court of Probate, and in a judge of such courts, and, without limiting the scope of the above, may exercise the jurisdiction of a court or a judge under any provision set out in Schedule B. 1978, c.32, s.9.

11(5) The Family Division may exercise its jurisdiction in respect of proceedings, other than by way of appeal, taken within a judicial district. 1978, c.32, s.9.

11(6) For the purposes of exercising jurisdiction relating to charges or other proceedings arising under

(a) the *Juvenile Delinquents Act (Canada)*, the Family Division is a juvenile court and a judge of the Family Division is a judge thereof; and

## DIVISION DE LA FAMILLE

## 11(1) Dans les articles 11 à 11.6

«circonscription judiciaire» désigne une circonscription judiciaire où la Division de la famille peut exercer sa compétence;

«procédure» comprend toute action, cause, question, pétition ou demande. 1978, c.32, art.9.

11(2) Le juge en chef de la Division du Banc de la Reine peut charger un juge de la Division de première instance d’entendre et de juger une procédure portée devant la Division de la famille en cas d’empêchement d’un juge de cette division pour quelque raison que ce soit; à cet effet, chaque juge de la Division de première instance a la qualité de juge de la Division de la famille. 1978, c.32, art.9.

11(3) La Division de la famille a la même compétence que la Division de première instance. 1978, c.32, art.9.

11(4) Sous réserve du paragraphe (5), la Division de la famille est instituée pour entendre et juger les procédures qui portent sur les matières énumérées à l’Annexe A et, à ces fins, elle peut également exercer la compétence dévolue à la Cour des divorces et des causes matrimoniales, à la Cour provinciale du Nouveau-Brunswick, à un tribunal des jeunes et à un tribunal des successions ainsi qu’à un juge de ces juridictions; et sans limiter sa compétence elle peut notamment exercer celle qu’un tribunal ou un juge tient des textes énumérés à l’Annexe B. 1978, c.32, art.9.

11(5) La Division de la famille peut connaître des procédures engagées dans une circonscription judiciaire, à l’exclusion de celles qui le sont par voie d’appel. 1978, c.32, art.9.

11(6) Pour connaître des inculpations et autres procédures résultant

a) de la *Loi sur les jeunes délinquants (Canada)*, la Division de la famille a la qualité d’un tribunal des jeunes et un juge de la Division de la famille, celle de juge de ce tribunal; et



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(b) the *Criminal Code (Canada)* in respect of which a magistrate or a summary conviction court has jurisdiction, a judge of the Family Division is a judge of the Provincial Court of New Brunswick. 1978, c.32, s.9.

11(7) All proceedings commenced in the Family Division shall be styled "In The Court of Queen's Bench of New Brunswick, Family Division". 1978, c.32, s.9; 1980, c.28, s.2.

11(8) In exercising its jurisdiction in respect of any proceeding the Family Division has, in addition to the powers and duties of a court or judge that would exercise jurisdiction but for this section, all the powers and duties of the Court of Queen's Bench and a judge thereof. 1978, c.32, s.9.

11(9) The Family Division has and may exercise jurisdiction as *parens patriae*. R.S., c.120, c.14; 1954, c.49, s.2; 1963(2nd Sess.), c.24, s.2; 1964, c.38, s.1; 1966, c.70, s.10; 1967, c.49, s.2; 1973, c.53, s.5; 1978, c.32, s.9.

11.1(1) The Lieutenant-Governor in Council may designate judicial districts in which the Family Division may exercise its jurisdiction.

11.1(2) The Family Division shall hold sittings in premises located within the judicial districts. 1978, c.32, s.9.

11.2(1) A proceeding within the jurisdiction of the Family Division may be commenced in the Family Division where any party to the proceeding resides in the judicial district in which the proceeding is commenced, or where any child with respect to whom the proceeding is taken or a decision or order is sought in the proceeding is within the judicial district.

11.2(2) With the consent of a judge of the Family Division and the consent of all parties to a proceeding, that proceeding may be commenced in the Family Division if it is within its jurisdiction, notwithstanding that subsection (1) does not apply.

b) du *Code criminel (Canada)* et qui relèvent d'un magistrat ou d'une cour des poursuites sommaires, un juge de la Division de la famille a la qualité d'un juge de la Cour provinciale du Nouveau-Brunswick. 1978, c.32, art.9.

11(7) Toutes les procédures intentées devant la Division de la Famille doivent porter l'en-tête «Cour du Banc de la Reine du Nouveau-Brunswick, Division de la Famille». 1978, c.32, art.9; 1980, c.28, art.2.

11(8) Outre les attributions du tribunal ou du juge qui serait normalement compétent si la présente loi n'était pas en vigueur, la Division de la famille possède également, lorsqu'elle exerce sa compétence dans une procédure quelconque, toutes celles de la Cour du Banc de la Reine et d'un de ses juges. 1978, c.32, art.9.

11(9) La Division de la famille peut intervenir en qualité de *parens patriae*. S.R., c.120, art.14; 1954, c.49, art.2; 1963(2e sess.), c.24, art.2; 1964, c.38, art.1; 1966, c.70, art.10; 1967, c.49, art.2; 1973, c.53, art.5; 1978, c.32, art.9.

11.1(1) Le lieutenant-gouverneur en conseil peut désigner des circonscriptions judiciaires où la Division de la famille peut exercer sa compétence.

11.1(2) La Division de la famille siège dans des locaux situés dans les circonscriptions judiciaires. 1978, c.32, art.9.

11.2(1) La Division de la famille peut être saisie d'une procédure qui relève de sa compétence lorsque l'une des parties à la procédure a sa résidence dans la circonscription judiciaire où la procédure est engagée ou que s'y trouve un enfant à l'égard duquel la procédure est engagée ou une décision ou ordonnance demandée.

11.2(2) Même en cas d'inapplicabilité du paragraphe (1), la Division de la famille peut être saisie d'une procédure qui entre dans sa compétence si un juge qui la compose et toutes les parties à la procédure y consentent.



*Judicature Act*

11.2(3) A judge of the Family Division may, in accordance with the regulations, order that a proceeding commenced in the Family Division be transferred to the Trial Division or to another court where, in the opinion of the judge, there is a preponderance of convenience for the proceeding to be dealt with in that Division or court. 1979, c.36, s.8.

11.2(4) If a proceeding that should not have been commenced in the Family Division is so commenced, a judge of the Family Division may, in accordance with the regulations, at any stage of the proceeding, order that the proceeding be transferred to the Trial Division or to another court in which the proceeding may properly be taken, and all steps taken by any party in the proceeding and all orders made therein before the transfer are valid and effectual as if they were taken or made in the Division or court in which the proceeding ought to have been commenced. 1979, c.36, s.8.

11.2(5) A judge of the Trial Division or of another court having jurisdiction in a proceeding that could be commenced in the Family Division, may, in accordance with the regulations, order that the proceeding be transferred to the Family Division where, in the opinion of the judge, there is a preponderance of convenience for the matter to be dealt with by the Family Division. 1979, c.36, s.8.

.....

12(1) The Chief Justice of New Brunswick shall determine the general policy of the Court of Appeal and the Court of Queen's Bench in judicial matters.

12(2) The Chief Justice of New Brunswick and the Chief Justice of the Court of Queen's Bench shall coordinate and apportion the work of the judges in their respective Courts and all the judges shall comply with any orders and directions of the Chief Justices relating thereto. R.S., c.120, s.15; 1966, c.70, s.11; 1978, c.32, s.10.

11.2(3) Un juge de la Division de la famille peut, en se conformant aux règlements, ordonner qu'une procédure engagée devant la Division de la famille soit transmise à la Division de première instance ou à un autre tribunal si à son avis, il est plus avantageux que cette procédure y soit entendue. 1979, c.36, art.8.

11.2(4) En cas d'engagement devant la Division de la famille d'une procédure qui n'aurait pas dû y être intentée, un juge de cette division peut, en se conformant aux règlements, à n'importe quel stade de la procédure, ordonner le renvoi devant la Division de première instance ou un autre tribunal où cette procédure peut être convenablement entendue; tous les actes accomplis par une partie à la procédure et toutes les ordonnances rendues à l'occasion de celle-ci avant la décision de renvoi conservent leur validité et produisent leurs effets comme s'ils avaient été accomplis ou rendus devant la Division ou le tribunal qui aurait dû être saisi. 1979, c.36, art.8.

11.2(5) Un juge de la Division de première instance ou d'un autre tribunal ayant compétence pour connaître d'une procédure qui pourrait être engagée devant la Division de la famille, peut, en se conformant aux règlements, ordonner le renvoi de la procédure devant la Division de la famille lorsqu'il estime qu'il serait plus commode de saisir celle-ci. 1979, c.36, art.8.

.....

12(1) Le juge en chef du Nouveau-Brunswick détermine la politique générale de la Cour d'Appel et de la Cour du Banc de la Reine en matière judiciaire.

12(2) Le juge en chef du Nouveau-Brunswick et le juge en chef de la Cour du Banc de la Reine doivent répartir et coordonner le travail des juges dans leur cour respective et tous les juges doivent observer les ordonnances et directives des juges en chef qui s'y rapportent. S.R., c.120, art.15; 1966, c.70, art.11; 1978, c.2, art.10.

13 Special courts of oyer and terminer and general gaol delivery may be held when necessary for any judicial district, with the same powers, privileges, incidents and duties in all respects as to crimes and offences as hereinbefore provided, where such court is authorized under the written authority of the Chief Justice of the Court of Queen's Bench. R.S., c.120, s.16; 1967, c.49, s.3; 1972, c.39, s.2; 1973, c.74, s.46; 1978, c.32, s.11.

13 Peuvent siéger pour une circonscription judiciaire, lorsque cela s'impose, des cours extraordinaires d'oyer and terminer and general goal delivery, qui ont les mêmes pouvoirs, privilèges, accessoires et fonctions à tous égards en ce qui concerne les crimes et infractions ainsi qu'il est prévu ci-dessus, lorsque la convocation de cette Cour est autorisée en vertu d'une autorisation écrite du juge en chef de la Cour du Banc de la Reine. S.R., c.120, art.16; 1967, c.49, art.3; 1973, c.39, art.2; 1973, c.74, art.46; 1978, c.32, art.11.

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CERTAIN JURISDICTION

CERTAINES COMPÉTENCES DE LA COUR

21 The jurisdiction of the Court shall be exercised, so far as regards procedure and practice, in the manner provided by this Act and the Rules, or by rules and orders of the Court made pursuant to this Act, and where no special provision is contained in this Act or in the rules or orders of the Court with reference thereto, it shall be exercised as nearly as may be in the same manner as it might have been exercised prior to the commencement of this Act. R.S., c.120, s.23.

21 La compétence de la Cour s'exerce, en matière de procédure et de pratique, de la manière prévue par la présente loi et les Règles ou par les règles et ordonnances de la Cour établies conformément à la présente loi et, lorsque la présente loi ou les Règles ou les règles ou ordonnances de la Cour ne contiennent pas de dispositions particulières s'y rapportant, elle s'exerce, autant que possible, de la même manière qu'elle l'aurait été avant l'entrée en vigueur de la présente loi. S.R., c.120, art.23.

22(1) The Court has jurisdiction to entertain an action at the instance of either the Attorney General for Canada, or the Attorney General for the Province for a declaration as to the validity of any statute or any provision in any statute of the Legislature, though no further relief is prayed or sought. 1980, c.28, s.5.

22(1) La Cour a compétence pour connaître d'une action intentée à la demande du procureur général du Canada ou du procureur général de la province afin d'obtenir une opinion déclaratoire concernant la validité d'une loi ou d'une disposition d'une loi de la Législature, quoiqu'aucun autre redressement ne soit demandé ou recherché. 1980, c.28, art.5.

22(2) A judgment in the action is appealable as other judgments of the Court.

22(2) Un jugement rendu dans une telle action est susceptible d'appel comme les autres jugements de la Cour.

22(3) In any case in which

22(3) Dans tous les cas où la question soulevée est

(a) a question arises as to whether

a) à savoir

(i) a statute or a provision of any statute of the Legislature is constitutionally valid or operative, or

(i) si une loi ou une disposition d'une loi de la Législature est constitutionnellement valide ou applicable; ou

(ii) a statute or a provision of any statute of the Parliament of Canada is constitutionally valid, or

(ii) si une loi ou une disposition d'une loi du Parlement du Canada est constitutionnellement valide, ou

## Judicature Act

(b) a question arises as to the interpretation of *The British North America Acts* or as to whether in relation thereto any regulation or by-law made pursuant to a statute of the Legislature or the Parliament of Canada is constitutionally valid or operative,

the Attorney General for Canada and the Attorney General for the Province shall be given notice thereof and either may, if he thinks fit, intervene as a party, produce evidence and argue matters of law as well before the trial judge as before the Court of Appeal, but in no case shall costs be awarded either for or against the Crown, nor shall it be necessary for the Crown to plead any matters other than its position with reference to the statutory provision involved. R.S., c.120, s. 24; 1980, c.28, s.5.

**23(1) Important questions of law or fact touching**

(a) the interpretation of *The British North America Acts*,

(b) the constitutionality or interpretation of any Canadian or Provincial legislation,

(c) the powers of the Legislature of the Province, or the Government thereof, whether or not the particular power in question has been or is proposed to be exercised, or

(d) any other matter, whether or not in the opinion of the Court *ejusdem generis* with the foregoing enumeration, with reference to which the Lieutenant-Governor in Council sees fit to submit any such question,

may be referred by the Lieutenant-Governor in Council to the Court of Appeal for hearing and consideration, and any question touching any of the matters aforesaid, so referred by the Lieutenant-Governor in Council, shall be conclusively deemed to be an important question. 1978, c.32, s.18.

b) à propos de l'interprétation de l'*Acte de l'Amérique du Nord britannique* ou à savoir si par rapport à cet Acte, les règlements ou règlements administratifs découlant d'une loi de la Législature ou du Parlement du Canada sont constitutionnellement valides ou applicables,

le procureur général du Canada et son homologue de la province doivent en être avisés et chacun peut, s'il l'estime opportun, intervenir en tant que partie, fournir des preuves et débattre des questions de droit tant devant le juge de première instance que devant la Cour d'appel mais en aucun cas, les frais et dépens ne doivent être prononcés en faveur ou à l'encontre de la Couronne et celle-ci reste entièrement libre de ne pas plaider les questions étrangères à sa position concernant la disposition statutaire impliquée. S.R., c.120, art.24; 1980, c.28, art.5.

**23(1) Les questions importantes de droit ou de fait qui intéressent**

a) l'interprétation de l'*Acte de l'Amérique du Nord britannique*,

b) la constitutionnalité ou l'interprétation d'une loi fédérale ou provinciale,

c) les pouvoirs de la Législature de la province ou de son gouvernement, que le pouvoir particulier dont il s'agit ait ou n'ait pas été exercé, ou qu'il doive ou ne doive pas être exercé, ou

d) toute autre matière, qu'elle soit ou non, dans l'opinion de la Cour, *ejusdem generis* que celles qui sont énumérées ci-dessus, au sujet de laquelle le lieutenant-gouverneur en conseil peut juger à propos de soumettre de telles questions,

peuvent être soumises par le lieutenant-gouverneur en conseil à la Cour d'appel, pour audition et pour examen; toute question touchant l'une des matières susdites, ainsi soumis par le lieutenant-gouverneur en conseil, est préemptoirement réputée être une question importante. 1978, c.32, art.18.



*Loi sur l'organisation judiciaire*

23(2) When any such reference is made to the Court it is the duty of the Court to hear and consider it and to answer each question so referred; and the Court shall certify to the Lieutenant-Governor in Council, for his information, its opinion upon each question, with the reasons for each answer; and such opinion shall be pronounced in like manner as in the case of a judgment upon an appeal to the said Court; and any judge who differs from the opinion of the majority shall in like manner certify his opinion and his reasons.

23(3) In any reference in which

(a) a question arises as to whether

(i) a statute or a provision of any statute of the Legislature is constitutionally valid or operative, or

(ii) a statute or a provision of any statute of the Parliament of Canada is constitutionally valid,

(b) a question arises that relates to the interpretation of *The British North America Acts* or as to whether in relation thereto any regulation or by-law made pursuant to a statute of the Legislature or the Parliament of Canada is constitutionally valid or operative, or

(c) the interpretation of any statute of the Parliament of Canada or regulation made thereunder is in question,

the Attorney General for Canada shall be notified of the hearing in order that he may be heard if he thinks fit. 1980, c. 28, s. 6.

23(4) The Court has power to direct that any person interested, or, where there is a class of persons interested, one or more persons as representatives of such class, shall be notified of the hearing upon any reference under this section and such persons are entitled to be heard thereon.

23(2) Lorsqu'une question lui est déférée, il incombe à la Cour de l'entendre et de l'étudier et de répondre à chaque question ainsi soumise; la Cour doit communiquer au lieutenant-gouverneur en conseil, à titre d'information, son opinion sur chacune de ces questions, en donnant ses raisons à l'appui de chaque réponse; cette opinion est donnée de la même manière que dans le cas d'un jugement rendu sur appel interjeté devant la Cour et tout juge dont l'opinion diffère de celle de la majorité, doit semblablement communiquer son opinion motivée.

23(3) Dans tous les cas de renvoi où la question soulevée est

a) à savoir

(i) si une loi ou une disposition d'une loi de la Législature est constitutionnellement valide ou applicable, ou

(ii) si une loi ou une disposition d'une loi du Parlement du Canada est constitutionnellement valide,

b) à propos de l'interprétation de l'*Acte de l'Amérique du Nord britannique* ou à savoir si par rapport à cet Acte, les règlements ou règlements administratifs découlant d'une loi de la Législature ou du Parlement du Canada sont constitutionnellement valides ou applicables, ou

c) à propos de l'interprétation d'une loi du Parlement du Canada ou d'un de ses règlements,

le procureur général du Canada doit être avisé de l'audience afin qu'il puisse s'y faire entendre s'il l'estime opportun. 1980, c. 28, art. 6.

23(4) La Cour a le pouvoir d'ordonner qu'une personne intéressée ou, si toute une catégorie de personnes est intéressée, une ou plusieurs personnes représentant cette catégorie, soient, par avis, prévenues de l'audition de toute question déférée à la Cour en vertu du présent article, et ces personnes ont le droit d'être entendues à ce sujet.

## Judicature Act

23(5) The opinion of the Court upon any reference, although advisory only, shall, for all purposes of appeal, be treated as a final judgment of the Court between parties. R.S., c.120, s.24A.

.....

## SCHEDULE A

- (a) formation of marriage;
- (b) dissolution and annulment of marriage;
- (c) jactitation of marriage;
- (d) judicial separation;
- (e) rights to property, in disputes among members of the same family, including dower, partition and sale, and settlements;
- (f) restitution of conjugal rights;
- (g) maintenance of a deceased person's dependents;
- (h) alimony, maintenance and protection for spouses;
- (i) maintenance of children;
- (j) maintenance of parents;
- (k) enforcement of alimony and maintenance orders;
- (l) affiliation proceedings;
- (m) custody of and access to children;
- (n) adoption;
- (o) declarations of status, including validity of marriage, legitimacy and legitimation;
- (p) charges or proceedings under the *Criminal Code of Canada* with respect to incest and other sexual offences committed by a family

23(5) L'opinion de la Cour sur toute question qui lui est déférée, même si elle n'est donnée qu'à titre consultatif, est considérée pour les fins de l'appel comme un jugement définitif de la Cour rendu entre des parties à une action. S.R., c.120, art.24A.

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## ANNEXE A

- a) les formalités du mariage;
- b) la dissolution et l'annulation du mariage;
- c) l'action appelée « *jactitation of marriage* »;
- d) la séparation judiciaire;
- e) le contentieux en matière de propriété entre membres d'une même famille, notamment le droit de douaire, le partage et la vente et les settlements;
- f) l'action en réintégration du domicile conjugal;
- g) entretien des personnes à charge d'une personne décédée;
- h) l'obligation alimentaire et d'entretien et la protection des époux;
- i) l'entretien des enfants;
- j) l'entretien des parents;
- k) l'exécution des ordonnances de pension alimentaire et d'entretien;
- l) les actions en déclaration de paternité;
- m) les droits de garde et de visite des enfants;
- n) l'adoption;
- o) les déclarations d'état civil, y compris la validité du mariage, la filiation légitime et la légitimation;
- p) les inculpations ou procédures en vertu du *Code criminel du Canada*, concernant l'inceste et les autres délits sexuels commis par un mem-

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member against another member of the same family, corrupting children, failing to provide necessities, abandoning children, abduction of children by members of the same family, assaults by a member of a family against another member of the same family and thefts by a family member from another member of the same family;

(q) charges or proceedings against a person under the age of sixteen years in respect of an offence under any provincial statute;

(r) charges or proceedings against a person in relation to an offence under a provincial statute against another member of his family;

(s) charges or proceedings under the *Juvenile Delinquents Act*;

(t) guardianship of the person and property of minors;

(u) consent to medical treatment of minors;

(v) actions in tort where the defendant, or any defendant, is a member of the same family as the plaintiff;

(w) the committal, custody or detention of any person, or the management of his property, for reasons of alcoholism, mental illness, mental incompetency or mental or physical infirmity;

(x) change of name;

(y) presumption of death. 1978, c.32, s.36.

bre d'une famille contre un autre membre de la même famille, la corruption d'enfants, le défaut de pourvoir, l'abandon d'enfants, l'enlèvement d'enfants par des membres de la même famille, les voies de fait commis par un membre d'une famille contre un autre membre de la même famille et les vols commis par un membre d'une famille contre un autre membre de la même famille;

q) les inculpations ou procédures contre une personne de moins de 16 ans à raison d'une infraction à une loi provinciale;

r) les inculpations ou procédures contre une personne à raison d'une infraction à une loi provinciale, commise contre un autre membre de sa famille;

s) les inculpations ou procédures en vertu de la *Loi sur les jeunes délinquants*;

t) la tutelle à la personne et aux biens des mineurs;

u) le consentement des mineurs à un traitement médical;

v) les actions en responsabilité civile lorsque le défendeur ou l'un des défendeurs fait partie de la famille du demandeur;

w) l'internement, la garde ou la détention d'une personne ou l'administration de ses biens pour cause d'alcoolisme, de maladie mentale, d'incapacité mentale ou de déficience physique ou mentale;

x) le changement de nom;

y) la présomption de décès. 1978, c.32, art.36.

SCHEDULE B

ANNEXE B

Adoption Act

Loi sur l'adoption

Change of Name Act

Loi sur le changement de nom

Children of Unmarried Parents Act

Loi sur les enfants naturels

Child Welfare Act

Loi sur le bien-être de l'enfance



*Judicature Act*

Criminal Code of Canada, section 150, section 153, section 166, section 168, section 197, section 200, section 224, section 245, section 249, section 250, subsection 289(2), section 745, section 746.	Code criminel du Canada, les articles 150, 153, 166, 168, 197, 200, 224, 245, 249, et 250, le paragraphe 289(2), les articles 745 et 746.
Deserted Wives and Children Maintenance Act	Loi sur l'obligation d'entretien envers les femmes et les enfants abandonnés
Divorce Act (Canada)	Loi sur le divorce (Canada)
Divorce Court Act	Loi sur la Cour des divorces
Extra-provincial Custody Orders Enforcement Act	Loi sur l'exécution des ordonnances de garde extra-provinciales
Guardianship of Children Act	Loi sur la tutelle des enfants
Habeas Corpus Act	Loi sur l' <i>habeas corpus</i>
Infirm Persons Act	Loi sur les personnes déficientes
Judicature Act and Rules of Court	Loi sur l'organisation judiciaire et Règles de la Cour
Juvenile Courts Act	Loi sur les tribunaux des jeunes
Juvenile Delinquents Act	Loi sur les jeunes délinquants (Canada)
Marriage Act	Loi sur le mariage
Married Woman's Property Act	Loi sur les biens de la femme mariée
Medical Consent of Minors Act	Loi sur le consentement des mineurs aux traitements médicaux
Mental Health Act	Loi sur la santé mentale
Parents Maintenance Act	Loi sur l'obligation d'entretien envers les parents
Presumption of Death Act	Loi sur la présomption de décès
Probate Courts Act, section 105	Loi sur les tribunaux des successions, article 105
Property Act	Loi sur les biens
Quieting of Titles Act, sections 26 and 27	Loi sur la validation des titres de propriété, articles 26 et 27
Reciprocal Enforcement of Judgments Act	Loi sur l'exécution réciproque des jugements

*Loi sur l'organisation judiciaire*

Reciprocal Enforcement of Maintenance Orders Act	Loi sur l'exécution réciproque des ordonnances d'entretien
Schools Act	Loi scolaire
Testators Family Maintenance Act	Loi sur l'obligation d'entretien envers la famille du testateur
Training Schools Act	Loi sur le centre de formation
Treatment of Intoxicated Persons Act 1978, c.32, s.36; 1979, c.36, s.11; 1980, c.28, s.13.	Loi sur le traitement des personnes en état d'ivresse 1978, c.32, art.36; 1979, c.36, art.11; 1980, c.28, art.13.

## Judges Disqualification Removal Act

R.S.N.B. 1973, c.J-1

with amendments to date, including  
1979, c.41

## Loi sur la non-récusation des juges

L.R.N.-B. 1973, c.J-1

et ses modifications à jour, y inclus  
1979, c.41

**1** In any suit, proceeding, cause, matter or thing, in or to which a county, parish, city, city corporation, municipal corporation, or other local authority or division is a party or in any way interested, affected or concerned, it shall not be alleged, taken or held, that any Judge of the **Court of Queen's Bench of New Brunswick or the Court of Appeal** is disabled or disqualified from hearing or determining the same from any interest or supposed interest in the event of the same for or by reason of such Judge being

(a) a freeman or inhabitant of any such county, parish, city, district, or division; or

(b) a holder in his own right or as trustee of any bond, debenture, or security for the payment of money issued by any such county, parish, city, city corporation, municipal corporation, or local authority or division; or

(c) a ratepayer of any such county, parish, city, district, or division, whether upon real or personal property, or income or otherwise; or

(d) a holder of any property, real or personal, that might be taxed or rated to meet any assessment, damages, costs, or charges to which any such county, parish, city, city corporation, municipal corporation, or local authority or division, might be subjected or put for or by reason of the suit, proceeding, cause, matter, or thing as aforesaid. R.S., c.119, s.1; 1979, c.41, s.70.

**1** Dans les procès, procédures, causes, questions ou choses qui concernent ou touchent un comté, une paroisse, une cité, une corporation de cité, une corporation municipale ou toute autre autorité ou division locale, ou auxquels ces derniers sont partie ou dans lesquels ils ont un intérêt, il ne peut être allégué, considéré ou admis qu'un juge de la **Cour du Banc de la Reine du Nouveau-Brunswick ou de la Cour d'appel** est incapable ou inhabile à les entendre et régler en raison de tout intérêt réel ou présumé qu'il pourrait avoir dans leur issue du fait

a) qu'il est citoyen ou habitant du comté, de la paroisse, de la cité, du district ou de la division; ou

b) qu'il détient, en propre ou en qualité de fiduciaire, des obligations, débetures ou titres émis, en garantie du paiement de sommes d'argent, par ce comté ou cette paroisse, cité, corporation de cité, corporation municipale ou autorité ou division locale; ou

c) qu'il est imposé par le comté, la paroisse, la cité, le district ou la division sur ses biens réels ou personnels ou sur ses revenus ou à tout autre titre; ou

d) qu'il possède des biens réels et personnels qui pourraient être imposés ou taxés pour faire face aux impositions, dommages-intérêts, frais ou charges auxquels le comté, la paroisse, la cité, la corporation de la cité, la corporation municipale ou l'autorité ou la division locale pourrait être condamné ou assujetti par suite du procès, de la procédure, cause, question ou chose ainsi qu'il est dit plus haut. S.R., c.119, art.1; 1979, c.41, art.70.





## DIVORCE COURT ACT

R.S.N.B. 1973, c. D-12

With amendments to date, including  
1980, c. M-1.1

Note:

The Court of Divorce and Matrimonial Causes is a court of record established in 1860. It has jurisdiction in questions concerning marriage, contracts of marriage, separation, divorce and alimony. Its jurisdiction can be exercised by the Family Division of the Court of Queen's Bench. The Court of Divorce and Matrimonial Causes consists of two or more judges appointed by the federal government, whose status is governed by the federal Judges Act, reproduced in part in volume 2 of this collection, pp. G47, and subs. The decisions of this court can be appealed to the provincial Court of Appeal, and subsequently to the Supreme Court of Canada.

This statute contains 38 sections and only provisions of constitutional law interest are reproduced below.

## LOI SUR LA COUR DES DIVORCES

L.R.N.-B. 1973, c. D-12  
et ses modifications à jour,  
y inclus 1980, c. M-1.1, art. 48

### Note:

La Cour des divorces et des causes matrimoniales est un tribunal d'archives constitué en 1860. Sa juridiction porte sur des questions concernant le mariage, les contrats de mariage et la dissolution du lien matrimonial en général. Sa compétence peut cependant être exercée par la division de la famille de la Cour du Banc de la Reine. La Cour des divorces et des causes matrimoniales se compose de deux ou plusieurs juges nommés par l'état fédéral et soumis à l'application de la Loi sur les juges adopté par le législateur fédéral et reproduite en partie aux pages G48 et suivantes du volume 2 de cette collection. Les décisions de cette cour peuvent être portées en appel devant la Cour d'appel provinciale et, ultérieurement, devant la Cour suprême du Canada.

Des 38 articles que contient la présente loi, seules sont reproduites les dispositions d'intérêt constitutionnel.



## Divorce Court Act

## Loi sur la Cour des divorces

### 1 In this Act

"Court" means the Court of Divorce and Matrimonial Causes;

"Judge" means a judge of the Court;

.....

2 All jurisdiction that, on the ninth day of April, 1860, under the authority of an Act made and passed in the thirty-first year of the Reign of His Majesty King George the Third intituled *An Act for Regulating Marriage and Divorce, and for Preventing and Punishing Incest, Adultery and Fornication*, was vested in or exercisable by the Court of Governor in Council, in respect of suits, controversies and questions concerning marriage and contracts of marriage, and divorce, as well from the bond of matrimony as divorce and separation from bed and board, and alimony, shall continue to belong to and to be vested in the Court of Record called "The Court of Divorce and Matrimonial Causes," constituted and established in and by Chapter 37 of the Acts of Assembly, 1860, intituled *An Act to amend the Law relating to Divorce and Matrimonial Causes*. R.S., c.63, s.2.

3 The Court consists of two or more judges. R.S., c.63, s.3; 1966, c.49, s.2.

.....

8 Solicitors entitled to practice in The Court of Queen's Bench of New Brunswick may practise in the Court. R.S., c.63, s.7; 1979, c.41, s.40.

9 A Judge has the like authority over proctors, solicitors, attorneys and advocates practising in the Court as is exercised by the judges of The Court of Queen's Bench of New Brunswick over persons practising in The Court of Queen's Bench of New Brunswick. R.S., c.63, s.8; 1966, c.49, s.5; 1979, c.41, s.40.

.....

### 1 Dans la présente loi

«Cour» désigne la Cour des divorces et des causes matrimoniales;

«juge» désigne un juge de la Cour;

.....

2 Toute compétence qui, le neuvième jour du mois d'avril 1860, par application d'une loi établie et adoptée au cours de la trente et unième année du règne de Sa Majesté le Roi George III, intitulée *An Act for Regulating Marriage and Divorce, and for Preventing and Punishing Incest, Adultery and Fornication* a été dévolue à la Cour du Gouverneur en Conseil ou qu'elle pouvait exercer en matière de procès, controverses et questions concernant le mariage, les contrats de mariage et le divorce, tant la dissolution du lien matrimonial que le divorce, la séparation de corps et de biens et la pension alimentaire continue d'appartenir et d'être dévolue à la Cour d'archives appelée «La Cour des divorces et des causes matrimoniales» constituée et établie dans et par le chapitre 37 des lois de l'Assemblée de 1860, intitulée *An Act to amend the Law relating to Divorce and Matrimonial Causes*. S.R., c.63, art.2.

3 La Cour se compose de deux ou plusieurs juges. S.R., c.63, art.3; 1966, c.49, art.2.

.....

8 Les *solicitors* ayant le droit d'exercer à la Cour du Banc de la Reine du Nouveau-Brunswick peuvent exercer à la Cour. S.R., c.63, art.7; 1979, c.41, art.40.

9 Un juge possède, sur les procureurs, *solicitors* et avocats exerçant auprès de la Cour, la même autorité que celle que possèdent les juges de la Cour du Banc de la Reine du Nouveau-Brunswick sur ceux qui exercent auprès de la Cour du Banc de la Reine du Nouveau-Brunswick. S.R., c.63, art.8; 1966, c.49, art.5; 1979, c.41, art.40.

.....

*Loi sur la Cour des divorces*

22 The Court shall have the like authority with reference to ante-nuptial or post-nuptial settlements as is exercised by The Court of Queen's Bench of New Brunswick. R.S., c.63, s.21; 1979, c.41, s.40.

22.1 Where proceedings are taken for a final decree of nullity of marriage or judicial separation the Court may consider, in conjunction therewith, any application that is authorized to be made under the *Marital Property Act*, and for such purposes the Court may exercise the authority imposed upon The Court of Queen's Bench of New Brunswick under that Act. 1980, c.M-1.1, s. 48.

.....

APPEALS

35 A party dissatisfied with a decision of the Court in any suit or proceedings may, under such rules and regulations as The Court of Queen's Bench of New Brunswick may have made, appeal therefrom to the Court of Appeal, from whose decision an appeal may be made to the Supreme Court of Canada. R.S., c.63, s.34; 1979, c.41, s.40.

.....

22 En matière de contrats anténuptiaux ou postnuptiaux, la Cour dispose des mêmes pouvoirs que ceux qu'exerce la Cour du Banc de la Reine du Nouveau-Brunswick. S.R., c.63, art.21, 1979, c.41, art.40.

22.1 Dans une procédure tendant à obtenir un jugement définitif de nullité du mariage ou de séparation judiciaire, la Cour peut prendre en considération toute demande faite conformément à la *Loi sur les biens matrimoniaux* et, à ces fins, elle peut exercer les pouvoirs que cette loi confère à la Cour du Banc de la Reine du Nouveau-Brunswick. 1980, c.M-1.1, art.48.

.....

APPELS

35 La partie non satisfaite d'une décision rendue par la Cour dans une action ou des procédures peut, en application des règles et règlements établis par la Cour du Banc de la Reine du Nouveau-Brunswick, interjeter appel à la Cour d'appel dont la décision peut également être portée en appel devant la Cour suprême du Canada. S.R., c.63, art.34; 1979, c.41, art.40.

.....

## PROBATE COURTS ACT

R.S.N.B. 1973, c. P-17

with amendments to date, including 1975, c. 45

Note:

This statute grants to the Probate Court exclusive jurisdiction in testamentary matters within the province, including the power to take the probate of wills and to grant administration of the estates of deceased persons. It does not, however, deprive the Family Division of the Court of Queen's Bench of any jurisdiction it has in such matters under the Judicature Act, reproduced above.

Judges of the Probate Court are appointed by the Lieutenant Governor in Council. Appeals from the Court of Probate lie to the Court of Appeal of New Brunswick.

The Probate Courts Act contains 156 sections, and only provisions of constitutional law interest are reproduced below.



LOI SUR LES TRIBUNAUX DES SUCCESSIONS

L.R.N.-B. 1973, c. P-17  
et ses modifications à jour, y inclus 1975, c. 45

Note:

Cette loi confère au tribunal des successions une compétence exclusive sur les successions dans la province, y compris le pouvoir de prononcer l'homologation des testaments et d'accorder les lettres d'administration des successions, sans toutefois déposséder la division de la famille de la Cour du Banc de la Reine des attributions qui lui sont dévolues en vertu de la Loi sur l'organisation judiciaire, reproduite antérieurement. Les juges du tribunal des successions sont nommés par le lieutenant-gouverneur en conseil. On peut interjeter appel de leurs décisions à la Cour d'appel du Nouveau-Brunswick.

La présente loi renferme 156 articles. Seules les dispositions d'intérêt constitutionnel sont reproduites.

## Probate Courts Act

## Loi sur les tribunaux des successions

### 1 In this Act

“Court” means the Court of Probate within the Province having jurisdiction in the matter;

“judge” means the person appointed as Judge of Probate for any county, or the person appointed to act as judge *pro hac vice*, or the person appointed as Acting Judge of Probate for any county;

.....

2(1) The Judges of Probate appointed by the Lieutenant-Governor in Council in the several counties in this Province have power to take the probate of wills and to grant administration of the estates of deceased persons in the manner hitherto in use, and to perform the other duties as hereinafter directed to be performed, subject to the rules and directions prescribed by this Act.

2(2) A judge shall continue in office and is in all respects authorized to act as such until some other person is appointed in his stead. R.S., c.175, s.2.

3 A judge may conduct the business of the Court at any place within any county for which he has been appointed Judge of Probate. 1968, c.48, s.1.

.....

5 No judge, or his professional partner, shall act as proctor, solicitor, advocate or counsel for the collection of any debt, claim or demand relating to, or by any estate in the county of which he is judge, and upon the allowance of which he shall, or may be, called upon to adjudicate; and no judge, or his professional partner, shall be proctor or advocate in any matter pending or to be brought before such judge. R.S., c.175, s.4.

### 1 Dans la présente loi

«juge» désigne une personne nommée juge des successions pour un comté, ou une personne désignée pour faire fonction de juge *pro hac vice*, ou une personne nommée juge suppléant des successions pour un comté;

«tribunal» désigne le tribunal des successions dans la province ayant compétence en la matière;

.....

2(1) Les juges des successions nommés par le lieutenant-gouverneur en conseil dans les divers comtés de la province ont pour attributions de prononcer l'homologation des testaments et d'octroyer l'administration des successions des personnes décédées selon la procédure jusqu'à présent en usage ainsi que d'exercer les autres fonctions qui leur sont ci-après assignées, sous réserve des règles et directives prescrites par la présente loi.

2(2) Un juge demeure en fonctions et est, à tous égards, autorisé à agir en cette qualité jusqu'à la nomination de son remplaçant. S.R., c.175, art.2.

3 Un juge peut conduire les délibérations du tribunal en n'importe quel endroit d'un comté pour lequel il a été nommé juge des successions. 1968, c.48, art.1.

.....

5 Un juge ou son associé de profession ne doit pas exercer les fonctions d'avocat, de *solicitor* ou de conseil pour le recouvrement d'une créance, d'une réclamation ou d'une demande concernant ou présentée par une succession située dans le comté où il est juge, sur l'admission desquelles il est ou peut être appelé à statuer; un juge ou son associé de profession ne peuvent faire fonction d'avocat dans toute question pendante ou devant être portée devant lui. S.R., c.175, art.4.

*Loi sur les tribunaux des successions*

6 The judge shall not act as judge in any estate in which he is interested as heir, next of kin, executor or legatee, or in which he is interested as creditor in an amount exceeding one hundred dollars. R.S., c.175, s.5.

7 Every judge shall be sworn to the faithful performance of his duties before he enters thereon. R.S., c.175, s.6.

8(1) In case of the illness of a judge, his absence from the county or counties for which he is appointed, his vacation, his leave of absence or in case of a vacancy in the office of a judge, the Lieutenant-Governor in Council may appoint, for a period to be determined by him, a person to be Acting Judge of Probate; and the person appointed shall be sworn to the faithful performance of the duties of the office and shall have all the powers incident thereto during the period of appointment or until the appointment is revoked and shall receive such remuneration as the Lieutenant-Governor in Council determines. *Am. 1974, c.37(Supp.), s.1.*

8(2) The person so appointed may be the Registrar of Probate for the county, or the judge or registrar for another county, and if any such judge or registrar is so appointed he shall perform the duties of Acting Judge of Probate for the county for which he is so appointed, in addition to his duties as registrar for that county, or as judge or registrar for such other county. R.S., c.175, s.7.

9(1) When a judge is, by reason of interest or otherwise, disqualified or unable to act as judge in any estate, or when there is a vacancy in the office of Judge of Probate for any county, the Lieutenant-Governor in Council, on the application of any party interested in the estate, or at the request of the judge, may appoint a suitable person to act as judge *pro hac vice* in the estate; but should the disqualification or inability of the Judge of Probate for that county at any time cease, or should there be an appointment to the position of Judge of Probate for that county, either as judge or acting judge, all proceedings in the estate commenced thereafter shall be had and continued by such judge or acting judge, and not

6 Le juge ne doit pas exercer ses fonctions dans une succession dans laquelle il a un intérêt soit à titre d'héritier, de proche parent, d'exécuteur testamentaire ou de légataire, soit à titre de créancier d'une somme de plus de cent dollars. S.R., c.175, art.5.

7 Avant d'entrer en fonctions, chaque juge doit prêter serment de remplir fidèlement les devoirs de sa charge. S.R., c.175, art.6.

8(1) Lorsqu'un juge est malade, absent du ou des comtés pour lesquels il est nommé, en vacances, en congé autorisé ou que le poste d'un juge est vacant, le lieutenant-gouverneur en conseil peut nommer une personne en qualité de juge suppléant des successions pour la période qu'il fixe; la personne nommée doit prêter serment de remplir fidèlement les devoirs de sa charge et dispose de tous les pouvoirs qui y sont rattachés pendant la période pour laquelle elle est nommée ou jusqu'à la révocation de la nomination, et elle reçoit la rémunération que fixe le lieutenant-gouverneur en conseil. *Mod.1974, c.37(Supp.), art.1.*

8(2) Le greffier des successions du comté ou le juge ou le greffier d'un autre comté peut être nommé juge suppléant des successions, la personne nommée exerce les fonctions de juge suppléant pour le comté pour lequel elle est nommée en sus de celles qu'elle exerce comme greffier de ce comté ou comme juge ou greffier de tout autre comté. S.R., c.175, art.7.

9(1) Lorsqu'un juge est, pour raison d'intérêt ou pour tout autre motif, inhabile ou incapable d'exercer sa charge dans une succession ou lorsque le poste de juge des successions d'un comté est vacant, le lieutenant-gouverneur en conseil, à la demande de toute partie ayant un intérêt dans la succession ou à la requête du juge, peut nommer une personne qualifiée pour remplir les fonctions de juge *pro hac vice* pour la succession; mais dans le cas où l'inhabilité ou l'incapacité du juge des successions de ce comté viendrait à cesser ou que serait nommé un juge des successions pour ce comté à titre de juge titulaire ou de juge suppléant, toutes les procédures engagées par la suite à l'égard de la succession seront prises en



Probate Courts Act

before the judge *pro hac vice*; but should such appointment as judge or acting judge be made during the pendency of any matter before such judge *pro hac vice* the latter shall, nevertheless, act as judge in that matter until it is fully disposed of.

9(2) If a judge, after granting probate or letters of administration, becomes by any means whatsoever interested in property of the estate, real or personal, the title or right to which is dependent upon the will or letters of administration, the Lieutenant-Governor in Council, on the application of such judge or the party entitled to take any proceedings in the estate, or of any other person interested in such estate, may appoint a suitable person to act as judge *pro hac vice*, in such matter, who in respect thereto has all the powers incidental to the office of Judge of Probate for all purposes connected with the estate. R.S., c.175, s.8; 1960-61, c.61, s.1.

.....

JURISDICTION

21(1) In the case of a person, resident in the Province, dying at any place, the judge of the Court in the county in which he was ordinarily resident at the time of his death, if he leaves assets in the Province, has exclusive jurisdiction over all the estate of the deceased person in the Province, and may take probate or grant letters of administration, and in the case of a deceased person not a resident of the Province at the time of his death, leaving assets in the Province, the judge of the Court of a county in which a portion of the assets are left, may take probate or grant administration, and such judge has exclusive jurisdiction over all the estate of the deceased person in the Province.

21(2) "Assets," within the meaning of subsection (1), includes all simple contract debts due to a deceased person domiciled within the Province, whether the debtor resides within or without the Province, and also includes all debts and sums of

charge et continuées par ce juge titulaire ou suppléant et non devant le juge *pro hac vice*; mais au cas où la nomination d'un juge titulaire ou suppléant aurait lieu pendant qu'une affaire est en cours devant ce juge *pro hac vice*, ce dernier doit néanmoins faire fonction de juge dans cette affaire jusqu'à ce qu'elle soit entièrement réglée.

9(2) Si un juge, après avoir homologué un testament ou accordé des lettres d'administration, vient à avoir, de quelque façon que ce soit, un intérêt dans des biens réels ou personnels de la succession, dont le droit de propriété dépend du testament ou des lettres d'administration, le lieutenant-gouverneur en conseil peut, sur la demande de ce juge, de la partie ayant le droit d'engager des procédures à l'égard de la succession ou de toute autre personne ayant un intérêt dans la succession, nommer dans cette affaire une personne qualifiée juge *pro hac vice*, qui disposera de tous les pouvoirs se rattachant à la fonction de juge des successions pour tout ce qui a trait à la succession. S.R., c.175, art.8; 1960-61, c.61, art.1.

.....

COMPÉTENCE

21(1) Dans le cas d'une personne résidant dans la province, qui vient à décéder en quelque lieu que ce soit, en laissant un actif dans la province, le juge du tribunal du comté où cette personne avait sa résidence habituelle au moment de son décès a compétence exclusive sur toute la succession du *de cujus* dans la province et peut procéder à l'homologation ou accorder les lettres d'administration; dans le cas où le *de cujus* ne réside pas dans la province au moment de son décès mais y laisse un actif, le juge du tribunal du comté où se trouve une partie de cet actif peut procéder à l'homologation ou accorder les lettres d'administration, ce juge ayant compétence exclusive sur toute la succession du *de cujus* se trouvant dans la province.

21(2) «Actif», au sens du paragraphe (1), comprend toutes les créances en vertu de contrats non-formels d'une personne défunte domiciliée dans la province, que le débiteur y réside ou non, et, comprend également toutes les créances du défunt

Loi sur les tribunaux des successions

money due to the deceased person on an obligation or other specialty, without regard to the place where such obligation or specialty is at the time of the death of the deceased. R.S., c.175, s.19.

22 Probate and letters of administration may be granted in respect of real property only, although there is no personal property. R.S., c.175, s.20.

.....

111 Nothing in this Act deprives the Supreme Court\*of any jurisdiction or powers that but for this Act that Court would have in the case of any executor, trustee or person, or that such Court or a judge thereof has under the *Judicature Act*, or by any other Act, and a judge of the Supreme Court\*may, in any case where he sees fit so to do, upon cause shown, exercise any power or authority belonging to the Supreme Court\*or to a judge thereof in reference to executors or trustees, notwithstanding a Probate Court or a judge thereof may by this Act or by law have concurrent or like jurisdiction or powers, and when application is made to the Supreme Court\*or a judge thereof for the exercise in any matter by such Court or judge of any power held concurrently by such Court or judge and the Probate Court and judge thereof, the Supreme Court\*judge may in his discretion stay by order the exercise or further exercise in such matter of such concurrent powers by the Probate Court or judge thereof. R.S., c.175, s.108.

.....

APPEALS

130(1) Any person aggrieved by any order, finding or decree of the judge may appeal therefrom to the Court of Appeal, and such appeal shall be conducted in manner following, to wit; he

\* Now The Court of Queen's Bench of New Brunswick.

et les sommes d'argent qui lui sont dues en vertu d'une obligation ou de tout autre contrat-formel, sans égard au lieu où cette obligation ou ce contrat formel se trouve à l'époque du décès du *de cujus*. S.R., c.175, art.19.

22 L'homologation et les lettres d'administration peuvent être accordées à l'égard de biens réels seulement, même s'il n'existe aucun bien personnel. S.R., c.175, art.20.

.....

111 Nulle disposition de la présente loi n'enlève à la Cour suprême\*la compétence ou les attributions dont, sans cette loi, elle serait investie à l'égard d'un exécuteur testamentaire, d'un fiduciaire ou de toute personne, ou que cette Cour ou un de ses juges détient en vertu de la *Loi sur l'organisation judiciaire* ou de toute autre loi; un juge de la Cour suprême\*peut, dans tout cas où il estime à propos d'agir ainsi et sur motif valable démontré, exercer toute attribution ou compétence dévolue à la Cour suprême\*ou à un de ses juges relativement aux exécuteurs testamentaires ou aux fiduciaires même si un tribunal des successions ou un de ses juges peut, par la présente loi ou par le droit, avoir une compétence ou des attributions concurrentes ou semblables; de même, quand est adressée à la Cour suprême\*ou à un de ses juges une demande requérant que cette Cour ou ce juge exerce, dans une affaire, une attribution détenue concurremment par la Cour suprême\*ou ce juge et le tribunal des successions ou tout juge de ce tribunal, le juge de la Cour suprême\*peut, à sa discrétion, suspendre, par voie d'ordonnance, l'exercice ou la continuation de l'exercice desdites attributions concurrentes en cette affaire par le tribunal des successions ou un de ses juges. S.R., c.175, art.108.

.....

APPELS

130(1) Toute personne lésée par une ordonnance, une conclusion ou un jugement du juge peut se pourvoir devant la Cour d'appel; cet appel doit être formé comme suit: la personne doit, dans les

\* A présent la Cour du Banc de la Reine du Nouveau-Brunswick.

## Probate Courts Act

shall file a notice of the appeal and the grounds thereof, with a surety bond, in the prescribed form, in the registrar's office within thirty days after the making of such order, finding or decree, and thereupon a judge of the Supreme Court\*may order that all proceedings in the case in the Probate Court be suspended until the appeal is determined, but the Supreme Court\*or a judge thereof at Chambers may, upon special cause shown and upon such terms as the Court or judge may prescribe, allow an appeal at any time within six months from any final order, finding or decree.

.....

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\* Now The Court of Queen's Bench of New Brunswick.

trente jours de la prise de l'ordonnance ou de la conclusion ou du prononcé du jugement, déposer au greffe un avis d'appel motivé, accompagné d'un cautionnement de garantie établi selon la formule prescrite; un juge de la Cour suprême\*peut alors ordonner la suspension de toutes les procédures engagées dans la cause portée devant le tribunal des successions jusqu'à ce que l'appel ait été jugé, mais la Cour suprême\*ou l'un de ses juges siégeant en chambre, peut, sur l'exposé d'un motif spécial et aux conditions que la cour ou le juge peut prescrire, permettre qu'un appel soit interjeté à quelque moment que ce soit dans les six mois de la prise d'une ordonnance ou d'une conclusion ou du prononcé d'un jugement définitifs.

.....

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\* A présent la Cour du Banc de la Reine du Nouveau-Brunswick.





## PROVINCIAL COURT ACT

R.S.N.B. 1973, c. P-21

with amendments to date, including 1980, c. 43

Note:

The Provincial Court is a court of record of first instance established in 1969 (S.N.B. 1969, c. 17). It is composed of a Chief Judge, an Associate Chief Judge, other judges and deputy judges appointed by the Lieutenant Governor in Council. Throughout the province they have all the powers, authority, criminal jurisdiction and quasi-criminal jurisdiction vested in a police magistrate or in two or more justices of the peace. Judges of this court exercise the jurisdiction conferred upon a magistrate by Part XVI of the Canadian Criminal Code (R.S.C. 1970, c. C-34), the jurisdiction specified in the provincial Summary Convictions Act (R.S.N.B. 1973, c. S-15), not reproduced here, as well as the jurisdiction exercised previously by magistrates and judges of a Magistrates Court. They can also enforce alimony or maintenance judgments of a higher court. The Provincial Court has a Family Division with its jurisdiction specified in section 11(2) and (3) of this statute. Pursuant to the provisions of the Protection of Persons Acting under Statute Act (R.S.N.B. 1973, c. P-20), a judge of the Provincial Court cannot be subject to an attachment, action, suit, fine or imprisonment for any act done within his jurisdiction. Appeals from decisions of the Provincial Court lie to the Court of Appeal or the Court of Queen's Bench, as the case may be.

The Provincial Court Act contains 24 sections, and only provisions of constitutional law interest are reproduced below.

## LOI SUR LA COUR PROVINCIALE

L.R.N.-B. 1973, c. P-21  
et ses modifications à jour, y inclus 1980, c. 43

Note:

La Cour provinciale est une cour d'archives de première instance constituée en 1969 (S.N.B. 1969, c. 17). Elle se compose d'un juge en chef, d'un juge en chef associé, de juges et de juges adjoints, tous nommés par le lieutenant-gouverneur en conseil. Chacun d'eux a, dans toute la province, les pouvoirs, l'autorité et la compétence pénale et quasi-pénale d'un magistrat de police ou de deux juges de paix. Les juges de ce tribunal exercent la juridiction conférée à un magistrat par la Partie XVI du Code criminel canadien, de même que la juridiction qui leur est dévolue par la loi provinciale intitulée Loi sur les poursuites sommaires (L.R.N.-B. 1973, c. S-15), non reproduite ici. Ils peuvent faire exécuter les jugements rendus par les tribunaux d'instance supérieure en matière de pension alimentaire. Ils ont également hérité de la compétence autrefois attribuée aux magistrats et aux juges de l'ancienne Cour de magistrat. La Cour provinciale compte une division de la famille dont la compétence matérielle est décrite à l'art. 11(2) et (3) de la présente loi. Conformément aux dispositions de la Loi sur la protection des personnes chargées de l'exécution de la loi (L.R.N.-B. 1973, c. P-20), un juge de la Cour provinciale ne peut faire l'objet d'une contrainte par corps, d'une action en justice, d'une amende ou d'une peine d'emprisonnement en raison d'un acte accompli dans les limites de sa compétence. Il y a appel à la Cour d'appel ou à la Cour du Banc de la Reine, selon le cas, des décisions rendues par la Cour provinciale.

La présente loi renferme 24 articles. Seules les dispositions qui offrent un intérêt en droit constitutionnel sont reproduites.



# Provincial Court Act

# Loi sur la Cour provinciale

## 1(1) In this Act

“chief judge” means the chief judge of the court;

“associate chief judge” means the associate chief judge of the court;

“court” means the Provincial Court;

“deputy judge” means a deputy judge of the court;

“judge” means a judge of the court and includes the chief judge. 1969, c.17, s.1; 1970, c.41, s.1; 1980, c.43, s.1.

.....

## 2 The Lieutenant-Governor in Council may appoint

(a) one or more persons to be judges,

(b) one or more persons to be deputy judges,

(c) a chief judge. 1969, and

(d) an associate chief judge. 1969, c.17, s.2; 1980, c.43, s.2.

## 3 No person is eligible to be appointed judge unless he is a barrister and solicitor of The Court of Queen’s Bench of New Brunswick and has been a member in good standing of the bar of a Province of Canada for at least five years immediately preceding the date of his appointment. 1969, c.17, s.3; 1979, c.41, s.100.

## 4 No person is eligible to be appointed deputy judge unless he is a barrister and solicitor of The Court of Queen’s Bench of New Brunswick and has been a member in good standing of the bar of a Province of Canada for at least two years immediately preceding the date of his appointment. 1969, c.17, s.4; 1979, c.41, s.100.

## 1(1) Dans la présente loi

«Cour» désigne la Cour provinciale;

«juge» désigne un juge de la Cour et comprend le juge en chef;

«juge adjoint» désigne un juge adjoint de la Cour;

«juge en chef» désigne le juge en chef de la Cour;

«juge en chef associé» désigne le juge en chef associé de la Cour. 1969, c.17, art.1; 1970, c.41, art.1; 1980, c.43, art.1.

.....

## 2 Le lieutenant-gouverneur en conseil peut nommer

a) un ou plusieurs juges,

b) un ou plusieurs juges adjoints,

c) un juge en chef. 1969, et

d) un juge en chef associé. 1969, c.17, art.2; 1980, c.43, art.2.

## 3 Nul ne peut être nommé juge à moins d’être avocat et *solicitor* auprès de la Cour du Banc de la Reine du Nouveau-Brunswick et d’être membre en règle du barreau d’une province du Canada depuis au moins cinq ans à la date de sa nomination. 1969, c.17, art.3; 1979, c.41, art.100.

## 4 Nul ne peut être nommé juge adjoint à moins d’être avocat et *solicitor* auprès de la Cour du Banc de la Reine du Nouveau-Brunswick et d’être membre en règle du barreau d’une province du Canada depuis au moins deux ans à la date de sa nomination. 1969, c.17, art.4; 1979, c.41, art.100.

*Loi sur la Cour provinciale*

5 The terms of the appointment of every judge and deputy judge shall be judicially noticed. 1969, c.17, s.5.

6(1) Subject to this Act, a judge holds office during good behaviour and may be removed from office only for misbehaviour or because of his inability to perform his duties properly.

6(2) Where the Lieutenant-Governor in Council has reason to believe that a judge is guilty of misbehaviour or is unable to perform his duties properly, he may suspend the judge from performance of the duties of the office.

6(3) Where the chief judge has reason to believe that a judge is guilty of misbehaviour or is unable to perform his duties properly, he may

(a) suspend the judge from performance of the duties of the office for a period not exceeding thirty days, or

(b) suspend the judge from performance of the duties of the office and report the suspension to the Lieutenant-Governor in Council.

6(4) Where the chief judge reports a suspension pursuant to paragraph (3)(b), he shall forthwith give notice to the judge by registered mail that he has so reported.

6(5) A judge who has been suspended may within thirty days of the suspension forward to the Lieutenant-Governor in Council a request for an inquiry, and the Lieutenant-Governor in Council upon receiving such request shall by order appoint a judge of The Court of Queen's Bench of New Brunswick to inquire into and report on the matter and shall direct that the inquiry be public or *in camera*, in accordance with the request of the judge unless the public interest requires that the inquiry be public. 1979, c.41, s.100.

6(6) Where a judge who has been suspended pursuant to subsection (2) or paragraph (3)(b) does not request an inquiry under subsection (5), the Lieutenant-Governor in Council shall

(a) order that such an inquiry be held,

(b) revoke the suspension, or

(c) remove the judge from office.

5 Le mandat de chacun des juges et juges adjoints est admis d'office en justice. 1969, c.17, art.5.

6(1) Sous réserve de la présente loi, un juge reste en fonctions tant qu'il en est digne et ne peut en être démis que pour mauvaise conduite ou en raison de son inaptitude à exercer convenablement ses fonctions.

6(2) Lorsque le lieutenant-gouverneur en conseil a des raisons de croire qu'un juge est coupable de mauvaise conduite ou qu'il est inapte à exercer convenablement ses fonctions, il peut le suspendre de l'exercice de ses fonctions.

6(3) Lorsque le juge en chef a des raisons de croire qu'un juge est coupable de mauvaise conduite ou est inapte à exercer convenablement ses fonctions, il peut

a) suspendre le juge de l'exercice de ses fonctions pour une période ne dépassant pas trente jours, ou

b) suspendre le juge de l'exercice de ses fonctions et faire rapport de la suspension au lieutenant-gouverneur en conseil.

6(4) Lorsque le juge en chef fait rapport d'une suspension conformément à l'alinéa (3)b), il doit immédiatement prévenir le juge de ce rapport par courrier recommandé.

6(5) Un juge qui a été suspendu peut, dans les trente jours qui suivent la suspension, adresser au lieutenant-gouverneur en conseil une demande d'enquête, et le lieutenant-gouverneur en conseil doit, sur réception de cette demande, nommer par décret un juge de la Cour du Banc de la Reine du Nouveau-Brunswick pour faire enquête et rapport sur la question et doit ordonner, conformément à la demande du juge, que l'enquête soit publique ou à *huis clos*, à moins que l'intérêt public n'exige que l'enquête soit publique. 1979, c.41, art.100.

6(6) Lorsqu'un juge qui a été suspendu conformément au paragraphe (2) ou à l'alinéa (3)b) n'exige pas une enquête en application du paragraphe (5), le lieutenant-gouverneur en conseil doit

a) ordonner qu'une telle enquête soit faite,

b) révoquer la suspension, ou

c) démettre le juge de ses fonctions.

*Provincial Court Act*

6(7) A judge of The Court of Queen's Bench of New Brunswick who is appointed pursuant to subsection (5) has, for the purposes of the inquiry, all the powers of a commissioner under the *Inquiries Act*. 1979, c.41, s.100.

6(8) The judge whose behaviour is the subject of the inquiry shall be given notice of the time and place appointed for the inquiry and he may attend with counsel, produce evidence and cross-examine witnesses.

6(9) Where the report of the inquiry confirms that the judge is guilty of misbehaviour or is unable to perform his duties properly the Lieutenant-Governor in Council shall remove him from office and a copy of the Order in Council and all reports, evidence and correspondence relating thereto shall be laid before the Legislative Assembly by the Minister within the first fifteen days of the next ensuing session.

6(10) Where the report of the inquiry does not confirm that the judge is guilty of misbehaviour or is unable to perform his duties properly, the Lieutenant-Governor in Council shall revoke the suspension and the judge shall stand in all respects as if no suspension had been made.

6(11) The judge of The Court of Queen's Bench of New Brunswick shall give a copy of the report of the inquiry to the judge whose behaviour is the subject of the inquiry. 1969, c.17, s.6; 1971, c.56, s.1; 1979, c.41, s.100.

7(1) A judge shall retire at the age of sixty-five years.

7(2) Notwithstanding subsection (1), the Lieutenant-Governor in Council in his sole discretion may extend the appointment of a judge beyond the age of sixty-five years but not beyond the age of seventy years.

7(3) A judge may resign his office at any time by notice in writing to the Minister.

7(4) Subject to section 3, the Lieutenant-Governor in Council may appoint a person who has reached the age of sixty-five years to be a judge and subsection (1) does not apply to such judge but he shall retire at the age of seventy years.

6(7) Un juge de la Cour du Banc de la Reine du Nouveau-Brunswick qui est nommé conformément au paragraphe (5) est investi, aux fins de l'enquête, de tous les pouvoirs d'un commissaire prévus par la *Loi sur les enquêtes*. 1979, c.41, art.100.

6(8) Le juge dont la conduite fait l'objet d'une enquête doit être avisé des temps et lieu fixés pour l'enquête et il peut s'y présenter avec un avocat, fournir des preuves et contre-interroger les témoins.

6(9) Lorsque le rapport de l'enquête confirme que le juge est coupable de mauvaise conduite ou est inapte à exercer convenablement ses fonctions, le lieutenant-gouverneur en conseil doit le démettre de ses fonctions et le Ministre doit déposer une copie du décret en conseil et de tous les rapports, toutes les preuves et toute la correspondance de l'affaire, devant l'Assemblée législative dans les quinze premiers jours de la session suivante.

6(10) Lorsque le rapport de l'enquête ne confirme pas que le juge est coupable de mauvaise conduite ou qu'il est inapte à exercer convenablement ses fonctions, le lieutenant-gouverneur en conseil doit révoquer la suspension et le juge se trouve, à tous égards, dans la même position que s'il n'y avait jamais eu de suspension.

6(11) Le juge de la Cour du Banc de la Reine du Nouveau-Brunswick doit remettre une copie du rapport de l'enquête au juge dont la conduite fait l'objet de l'enquête. 1969, c.17, art.6; 1971, c.56, art.1; 1979, c.41, art.100.

7(1) Un juge doit prendre sa retraite à soixante-cinq ans.

7(2) Nonobstant le paragraphe (1), le lieutenant-gouverneur en conseil a discretion exclusive pour prolonger le mandat d'un juge au-delà de soixante-cinq ans mais non au-delà de soixante-dix ans.

7(3) Un juge peut démissionner en tout temps par avis écrit adressé au Ministre.

7(4) Sous réserve de l'article 3, le lieutenant-gouverneur en conseil peut nommer juge une personne qui a atteint l'âge de soixante-cinq ans et le paragraphe (1) ne s'applique pas à un juge ainsi nommé mais il doit se retirer à l'âge de soixante-dix ans.



Loi sur la Cour provinciale

7(5) Sections 15, 16 and 17 do not apply to a judge who is appointed after he has reached the age of sixty-five years nor to the surviving spouse or children of such judge. 1969, c.17, s.7; 1971, c.56, s.2; *Am.1974, c.39(Supp.), s.1.*

8(1) Each judge and deputy judge is hereby constituted a court of record and, throughout the Province, has all the powers, authority, criminal jurisdiction and quasi-criminal jurisdiction vested in a police magistrate or in two or more justices of the peace sitting and acting together, under any law or statute in force in the Province; and the powers, authority or jurisdiction are not affected by the place where an offence is committed or an act occurs.

8(2) Where in any Act or statute, whether public or private, in force in the Province the expression "justice", "police magistrate", "stipendiary magistrate", "sitting magistrate", "county magistrate", "magistrate", or "judge of a magistrates court" is used, it is deemed to include a judge and a deputy judge appointed under this Act.

8(3) Every appointment of a judge and of a deputy judge is deemed by its terms to specially authorize him to exercise the jurisdiction conferred upon a magistrate by Part XVI of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970.

8(4) Every judge and deputy judge is *ex officio* a justice of the peace in and for every county in the Province and a commissioner of oaths. 1969, c.17, s.8; 1973, c.74, s.66.

9 A person entitled to alimony or maintenance under a judgment or order of The Court of Queen's Bench of New Brunswick or of the Court of Appeal may file a copy of the judgment or order in the court with a judge having jurisdiction where the person ordered to pay or the person entitled then resides, and when so filed it may be enforced by the judge in the same manner as an order made under the *Deserted Wives and Children Maintenance Act*. 1972, c.56, s.3A; 1979, c.41, s.100.

.....

7(5) Les articles 15, 16 et 17 ne s'appliquent pas à un juge nommé après qu'il a atteint l'âge de soixante-cinq ans ni au conjoint survivant ni aux enfants de ce juge. 1969, c.17, art.7; 1971, c.56, art.2; *Mod.1974, c.39(Supp.), art.1.*

8(1) Chacun des juges et des juges adjoints constitue par la présente loi une cour d'archives et a, dans toute la province, les pouvoirs, l'autorité et la compétence pénale et quasi-pénale, d'un magistrat de police ou de deux juges de paix ou plus, siégeant et agissant ensemble, en vertu de toute loi ou règle de droit en vigueur dans la province; le lieu où une infraction ou une action est commise ne modifie en rien ces pouvoirs, cette autorité ou cette compétence.

8(2) Lorsque l'expression «juge de paix», «magistrat de police», «magistrat rémunéré», «magistrat en audience», «magistrat de comté», «magistrat» ou «juge d'une cour de magistrat» est employée dans une loi, elle est réputée comprendre un juge et un juge adjoint nommé en application de la présente loi.

8(3) Le libellé de toute nomination d'un juge ou d'un juge adjoint est réputé l'autoriser spécialement à exercer la juridiction conférée à un magistrat par la Partie XVI du *Code criminel*, chapitre C-34 des Statuts révisés du Canada de 1970.

8(4) Les juges et juges adjoints sont d'office juges de paix pour tous les comtés de la province et commissaires aux serments. 1969, c.17, art.8; 1973, c.74, art.66.

9 Une personne ayant droit à une pension alimentaire ou d'entretien en vertu d'un jugement ou d'une ordonnance de la Cour du Banc de la Reine du Nouveau-Brunswick ou de la Cour d'appel peut déposer une copie du jugement ou de l'ordonnance à la Cour dont le juge a compétence dans le lieu où la personne ordonnée de payer ou la personne bénéficiaire réside à ce moment, et lorsque ce jugement ou cette ordonnance sont déposés ils peuvent être mis en vigueur par un juge de la même manière qu'une ordonnance rendue en application de la *Loi sur l'obligation d'entretien envers les femmes et les enfants abandonnés*. 1972, c.56, art.3A; 1979, c.41, art.100.

.....

*Provincial Court Act*

10.1(1) In the event of a vacancy in the office of chief judge, or if the chief judge is unable to act because of illness, absence or other cause, the associate chief judge shall perform the duties of the chief judge.

10.1(2) The chief judge may delegate any duty imposed on him or delegated to him by or under this Act to the associate chief judge. 1980, c. 43, s. 3.

11(1) The Lieutenant-Governor in Council may designate one or more judges or deputy judges to hold sittings to be styled "Provincial Court Family Division" and a judge or deputy judge so designated shall be styled "Judge of the Provincial Court Family Division".

11(2) Notwithstanding any other Act, a judge of the Provincial Court Family Division has exclusive jurisdiction within the places and areas designated by the Minister under paragraph 10(1)(d)

(a) over matters and proceedings within the jurisdiction of the Provincial Court arising under the following Acts:

- (i) *Children of Unmarried Parents Act*,
- (ii) *Child Welfare Act*,
- (iii) *Deserted Wives and Children Maintenance Act*,
- (iv) *Marriage Act*,
- (v) *Parents' Maintenance Act*,
- (vi) *Reciprocal Enforcement of Maintenance Orders Act*,
- (vii) *Schools Act*,
- (viii) *Social Welfare Act*,
- (ix) *Training School Act*, and
- (x) such other Acts as may be designated by the Lieutenant-Governor in Council; and

(b) over such other matters as the Lieutenant-Governor in Council designates.

11(3) Notwithstanding the *Juvenile Courts Act*, every Provincial Court Family Division designated under this Act is a juvenile court

10.1(1) Dans le cas de vacance du poste de juge en chef ou si celui-ci est incapable d'exercer ses fonctions pour raison de maladie, d'absence ou pour tout autre motif, le juge en chef associé exerce les fonctions du juge en chef.

10.1(2) Le juge en chef peut déléguer toute fonction qui lui est imposée par la présente loi ou déléguée en vertu de celle-ci, au juge en chef associé. 1980, c. 43, art. 3.

11(1) Le lieutenant-gouverneur en conseil peut désigner un ou plusieurs juges ou juges adjoints qui doivent siéger sous le nom de «Division de la famille de la Cour provinciale» et un juge ou un juge adjoint ainsi nommé est désigné sous le nom de «Juge de la Division de la famille de la Cour provinciale».

11(2) Nonobstant toute autre loi, un juge de la Division de la famille de la Cour provinciale a compétence exclusive dans le lieu ou les lieux et la région ou les régions désignés par le Ministre en application de l'alinéa 10(1)d)

a) relativement aux questions et procédures relevant de la compétence de la Cour provinciale et du domaine des lois suivantes:

- (i) la *Loi sur les enfants naturels*,
- (ii) la *Loi sur le bien-être de l'enfance*,
- (iii) la *Loi sur l'obligation d'entretien envers les femmes et les enfants abandonnés*,
- (iv) la *Loi sur le mariage*,
- (v) la *Loi sur l'obligation d'entretien envers les parents*,
- (vi) la *Loi sur l'exécution réciproque des ordonnances d'entretien*,
- (vii) la *Loi scolaire*,
- (viii) la *Loi sur le bien-être social*,
- (ix) la *Loi sur l'École de formation*, et
- (x) les autres lois que le lieutenant-gouverneur en conseil peut désigner; et

b) relativement aux autres questions que le lieutenant-gouverneur en conseil désigne.

11(3) Nonobstant la *Loi sur les tribunaux des jeunes*, chaque Division de la famille de la Cour provinciale désignée en application de la présente



Loi sur la Cour provinciale

within the meaning of and for the purposes of the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, and has all the powers vested in a juvenile court under that Act, and every judge of the Provincial Court Family Division has all the powers vested in a judge of a juvenile court under the *Juvenile Delinquents Act* and the *Juvenile Courts Act*, and has exclusive jurisdiction within the places and areas designated by the Minister under paragraph 10(1)(d) over all matters arising under the *Juvenile Delinquents Act* and over all other matters over which a juvenile court established under the *Juvenile Courts Act* would have jurisdiction, but for this subsection.

.....

12(1) Before exercising his powers of office, each judge and deputy judge shall take and subscribe the following oath of office:

I, ..... of .....  
in the County of ..... do swear  
that I will faithfully, impartially and honestly  
execute all the powers and duties of the office of  
judge (or deputy judge) of the Provincial Court  
according to my best skill and knowledge; and I  
will do right by all manner of people according  
to law, without fear or favor, affection or ill-  
will. So Help Me God.

12(2) The oath is to be taken and subscribed before a judge of The Court of Queen's Bench of New Brunswick and is to be filed by the judge or deputy judge in the office of the Minister. 1979, c.41, s.100.

12(3) A judge or deputy judge sworn under the *Magistrates Courts Act* is deemed to have been sworn under this Act. 1969, c.17, s.10.

13(1) A judge shall devote his whole time to the performance of his duties as a judge and shall not practise, carry on or conduct any business in the profession or practice of the law and shall not engage in any business, trade, profession or occupation without prior approval in each particular case by the Lieutenant-Governor in Council.

loi est un tribunal de jeunes aux termes et aux fins de la *Loi sur les jeunes délinquants*, chapitre J-3 des Statuts révisés du Canada de 1970, et est investie de tous les pouvoirs dévolus à un tribunal de jeunes en application de cette loi, et tous les juges de la Division de la famille de la Cour provinciale sont investis de tous les pouvoirs dévolus à un juge d'un tribunal de jeunes prévu par la *Loi sur les jeunes délinquants* et la *Loi sur les tribunaux des jeunes*, et ont compétence exclusive dans le lieu ou les lieux et la région ou les régions désignés par le Ministre en application de l'alinéa 10(1)d) relativement aux questions relevant du domaine de la *Loi sur les jeunes délinquants* et relativement à toute question, à l'exception du présent paragraphe, relevant de la compétence d'un tribunal de jeunes, établi en application de la *Loi sur les tribunaux des jeunes*.

.....

12(1) Avant d'entrer en fonctions, chaque juge ou juge adjoint doit prêter et signer le serment qui suit:

Je soussigné, ..... de .....  
....., dans le comté de .....  
.. jure d'exercer fidèlement, impartialement et  
honnêtement, au mieux de mes capacités et  
connaissances, tous les pouvoirs et toutes les  
fonctions de la charge de juge (ou juge adjoint)  
de la Cour provinciale; je rendrai justice à tous  
selon le droit, sans crainte ni favoritisme, sans  
affection ni malveillance. Que Dieu me soit en  
aide.

12(2) Le serment doit être prêté et signé devant un juge de la Cour du Banc de la Reine du Nouveau-Brunswick et déposé par le juge ou juge adjoint au bureau du Ministre. 1979, c.41, art.100.

12(3) Un juge ou juge adjoint qui a prêté serment aux termes de la loi intitulée *Magistrates Courts Act* est réputé avoir prêté serment aux termes de la présente loi. 1969, c.17, art.10.

13(1) Un juge doit consacrer tout son temps à l'exercice de ses fonctions de juge; il ne doit pratiquer, exercer ou traiter aucune affaire relative à la profession ou à la pratique du droit ni s'adonner à aucun commerce ou métier, aucune profession ou occupation sans avoir d'abord obtenu, pour chacun des cas, l'approbation du lieutenant-gouverneur en conseil.



*Provincial Court Act*

**13(2)** This section does not prohibit a judge or deputy judge from carrying out the duties of a juvenile court judge or any other duties assigned to him by order of the Lieutenant-Governor in Council.

**13(3)** A breach of this section is deemed to be misbehaviour under section 6. 1969, c.17, s.11.

.....

**20** Where any Act confers powers upon, or provides that a matter may be heard before, a magistrate, a deputy magistrate, a judge of a Magistrates Court or a deputy judge of a Magistrates Court, then such powers may be exercised by and such matters may be heard before a judge or deputy judge under this Act. 1969, c.17, s.20.

.....

**13(2)** Le présent article n'interdit pas à un juge ou juge adjoint d'exercer les fonctions de juge d'un tribunal des jeunes ou toutes autres fonctions qui lui sont assignées par décret du lieutenant-gouverneur en conseil.

**13(3)** Une violation du présent article constitue une mauvaise conduite au sens de l'article 6. 1969, c.17, art.11.

.....

**20** Lorsqu'une loi quelconque confère des pouvoirs à un magistrat, un magistrat adjoint, un juge ou un juge adjoint d'une cour de magistrats, ou qu'elle prévoit qu'une affaire peut être entendue par l'un d'eux, ces pouvoirs peuvent être exercés et ces affaires entendues par un juge ou juge adjoint sous le régime de la présente loi. 1969, c.17, art.20.

.....



## JUVENILE COURTS ACT

R.S.N.B. 1973, c. J-4

Note:

The Juvenile Court is a court of record whose judges and deputy judges are appointed by the Lieutenant Governor in Council. It is a court for juvenile delinquents within the meaning of the Juvenile Delinquents Act of Canada (R.S.C. 1970, c. J-3). In addition, this court has power to try any child charged with an offence against the laws of the province, and to deal with all cases arising under any statute relating to the treatment of children or deals with juvenile delinquency or under the provincial Schools Act. It should also be mentioned that notwithstanding the provisions of this statute, and in compliance with section 11(3) of the Provincial Court Act, reproduced above, every Provincial Court Family Division has all the powers vested in a juvenile court. Appeals from decisions of the Juvenile Court lie to the Court of Queen's Bench and subsequently to the Court of Appeal of New Brunswick.

The Juvenile Courts Act contains 17 sections, and only provisions of constitutional law interest are reproduced below.



## LOI SUR LES TRIBUNAUX DES JEUNES

L.R.N.-B. 1973, c. J-4

Note:

Le Tribunal des jeunes est une cour d'archives dont les juges et les juges suppléants sont nommés par le lieutenant-gouverneur en conseil. Il constitue une cour pour jeunes délinquants au sens et aux fins de la Loi sur les jeunes délinquants du Canada. En outre, ce tribunal a le pouvoir de juger tout enfant inculpé d'une infraction aux lois du Nouveau-Brunswick et d'entendre toute cause tombant sous le coup de dispositions législatives relatives au traitement des enfants ou à la délinquance juvénile ou relevant de la Loi scolaire provinciale. Il convient de rappeler que, notwithstanding la présente loi et conformément à l'art. 11(3) de la Loi sur la Cour provinciale reproduite antérieurement, chaque division de la famille de la Cour provinciale est investie de tous les pouvoirs dévolus au Tribunal des jeunes. Les décisions du Tribunal des jeunes peuvent faire l'objet d'un appel à la Cour du Banc de la Reine et, ultérieurement, à la Cour d'appel du Nouveau-Brunswick.

Des 17 articles qui composent la présente loi, seules sont reproduites ci-après les dispositions d'intérêt constitutionnel.

## Juvenile Courts Act

## Loi sur les tribunaux des jeunes

### ESTABLISHMENT OF COURTS

1(1) In every city, town, county or portion of the Province in which the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, is in force there shall be a court of record known as the Juvenile Court of the city, town, county or other area, as the case may be.

1(2) A Juvenile Court has jurisdiction within such territory, in addition to the area included within the limits of the city, town, county or other portion of the Province for which it is established, as the Lieutenant-Governor in Council may designate. R.S., c.123, s.1.

### JUDGES

2(1) The Lieutenant-Governor in Council may appoint a judge of the Juvenile Court and one or more deputy judges of the Juvenile Court for any city, town, county or other portion of the Province.

2(2) Each judge of a Juvenile Court is *ex officio* a deputy judge of the Juvenile Court for every city, town, county or other portion of the Province for which a judge of the Juvenile Court has been appointed and has and shall exercise within the territorial limits thereof the same powers, authority and jurisdiction as the judge of the Juvenile Court appointed for such city, town, county or other portion of the Province, as the case may be. R.S., c.123, s.2; 1963(2nd Sess.), c.25, s.1.

### JURISDICTION

3 Every Juvenile Court established under this Act is a Juvenile Court within the meaning and

### ÉTABLISSEMENT DES TRIBUNAUX

1(1) Il est créé dans chaque cité, ville, comté ou partie de la province où s'applique la *Loi sur les jeunes délinquants*, chapitre J-3 des Statuts révisés du Canada de 1970, une cour d'archives, appelée tribunal des jeunes de la cité, de la ville, du comté ou de la partie de la province, suivant le cas.

1(2) En plus d'avoir compétence dans la zone incluse dans les limites de la cité, de la ville, du comté ou de la partie de la province pour lesquels ils sont constitués, les tribunaux des jeunes exercent leur compétence dans le ressort que peut leur désigner le lieutenant-gouverneur en conseil. S.R., c.123, art.1.

### JUGES

2(1) Le lieutenant-gouverneur en conseil peut nommer un juge et un ou plusieurs juges-suppléants auprès du tribunal des jeunes d'une ville, d'une cité, d'un comté ou d'une partie de la province.

2(2) Chaque juge d'un tribunal des jeunes est d'office juge-suppléant du tribunal des jeunes de toute cité, ville, comté ou autre partie de la province où un juge du tribunal des jeunes a été nommé; il possède et doit exercer, dans ce ressort, les mêmes pouvoirs, autorité et compétence que le juge du tribunal des jeunes nommé dans la cité, dans la ville, dans le comté ou dans la partie de la province, suivant le cas. S.R., c.123, art.2; 1963(2<sup>e</sup> sess.), c.25, art.1.

### COMPÉTENCE

3 Les tribunaux des jeunes créés en application de la présente loi constituent des cours pour

Loi sur les tribunaux des jeunes

for the purposes of the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970, and has all the powers vested in a Juvenile Court under that Act, and has power to try any child charged with an offence against the laws of the Province and to deal with all cases arising under any Act that relates to the treatment of children or deals with juvenile delinquency, or under the *Schools Act*. R.S., c.123, s.3; 1966, c.72, s.1.

.....

COMMITTEE

13 There shall be in connection with each Juvenile Court a committee of citizens, serving without remuneration, to be known as "The Juvenile Court Committee", which committee shall be constituted as provided by section 27 of the *Juvenile Delinquents Act*, chapter J-3 of the Revised Statutes of Canada, 1970. R.S., c.123, s.14.

.....

jeunes délinquants au sens et aux fins de la *Loi sur les jeunes délinquants*, chapitre J-3 des Statuts révisés du Canada de 1970; ils possèdent tous les pouvoirs que cette loi confère aux cours pour jeunes délinquants et ont le pouvoir de juger tout enfant inculpé d'une infraction aux lois de la province et de connaître de toutes les affaires tombant sous le coup des dispositions d'une loi relative au traitement des enfants ou à la délinquance juvénile ou relevant de la *Loi scolaire*. S.R., c.123, art.3; 1966, c.72, art.1.

.....

COMITÉ

13 Il est établi, de pair avec chaque tribunal des jeunes, un comité de citoyens, dont les services sont gratuits, désigné sous le nom de «Comité du tribunal des jeunes», lequel est constitué conformément aux dispositions de l'article 27 de la *Loi sur les jeunes délinquants*, chapitre J-3 des Statuts révisés du Canada de 1970. S.R., c.123, art.14.

.....



FUNDAMENTAL RIGHTS



LIBERTÉS FONDAMENTALES



## FUNDAMENTAL RIGHTS

### Introduction

In addition to fundamental rights guaranteed by federal legislation referred to in volume 2 of this collection (Chapter H), fundamental rights are also protected by provincial statutes of New Brunswick, reproduced below:

1. Human Rights Act, R.S.N.B. 1973, c. H-11, as amended.
2. Right to Information Act, S.N.B. 1978, c. R-10.3; R.S.N.B. 1973, c. R-10.3, as amended.

Other statutes of New Brunswick, not reproduced here, contain provisions concerning fundamental rights, such as:

1. Industrial Relations Act, R.S.N.B. 1973, c. I-14, as amended (See especially sections 2 to 9).
2. Advisory Council on the Status of Women Act, S.N.B. 1975, c. A-3.1; R.S.N.B. 1973, c. A-3.1, as amended.

### Selected references:

- Reid, Alan D., "The New Brunswick Human Rights Act," (1968), 18 University of Toronto Law Journal 394-400.
- Tarnopolsky, Walter S., "Legislative Jurisdiction with Respect to Anti-Discrimination (Human Rights) Legislation in Canada", (1980), 12 Ottawa Law Review 1-47.



## LIBERTÉS FONDAMENTALES

### Introduction

Outre la législation fédérale signalée au chapitre H du volume 2 de cette collection, les lois provinciales suivantes, reproduites ci-après, assurent la protection des libertés fondamentales au Nouveau-Brunswick:

1. Loi sur les droits de l'homme, L.R.N.-B. 1973, c. H-11 et ses modifications
2. Loi sur le droit à l'information, L.N.-B. 1978, c. R-10.3; L.R.N.-B. 1973, c. R-10.3 et ses modifications

D'autres lois de cette province, non reproduites ici, renferment également des dispositions relatives aux libertés fondamentales. Parmi celles-ci, il y a lieu de signaler les suivantes:

1. Loi sur les relations industrielles, L.R.N.-B., c. I-4 et ses modifications (en particulier les art. 2 à 9)
2. Loi créant le Conseil consultatif sur la condition de la femme, L.N.-B. 1975, c. A-3.1 et ses modifications

### Sources choisies

- Reid, Alan D., "The New Brunswick Human Rights Act", (1968) 18 University of Toronto Law Journal, pp. 394-400.
- Tarnopolsky, Walter, "Legislative Jurisdiction with Respect to Anti-Discrimination (Human Rights) Legislation in Canada", (1980) 12 Ottawa Law Review, pp. 1-47.

## Human Rights Act

R.S.N.B. 1973, c. H-11

with amendments to date, including  
1979, c. 41

WHEREAS recognition of the fundamental principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry, place of origin, age, marital status or sex, is a governing principle sanctioned by the laws of New Brunswick; and

WHEREAS ignorance, forgetfulness, or contempt of the rights of others are often the causes of public miseries and social disadvantage; and

WHEREAS men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law; and

WHEREAS it is recognized that human rights must be guaranteed by the rule of law, and that these principles have been confirmed in New Brunswick by a number of enactments of this Legislature; and

WHEREAS it is desirable to enact a measure to codify and extend such enactments and to simplify their administration;

THEREFORE, Her Majesty, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

1 This Act may be cited as the *Human Rights Code*. 1971, c.8, s.1.

2 In this Act

“age” means nineteen years of age and over;

“Board” means Board of Inquiry;

“business or trade association” means an organization of persons that by an enactment, agreement or custom has power to admit, suspend, expel or direct persons in relation to any business or trade;

“commercial unit” means any building or other structure or part thereof that is used or

## Loi sur les droits de l'homme

L.R.N.-B. 1973, c. H-11

et ses modifications à jour, y inclus  
1979, c. 41

CONSIDÉRANT que la reconnaissance du principe fondamental de l'égalité de tous les êtres humains en dignité et en droits, sans distinction de race, de couleur, de croyance, d'origine nationale, d'ascendance, de lieu d'origine, d'âge, d'état matrimonial ou de sexe, est un principe directeur sanctionné par les lois du Nouveau-Brunswick;

CONSIDÉRANT que l'ignorance, la négligence ou le mépris des droits d'autrui sont souvent les causes de souffrances publiques et de désavantages sociaux;

CONSIDÉRANT que les hommes et les institutions ne demeurent libres que lorsque la liberté est fondée sur le respect des valeurs morales et spirituelles et de la prééminence du droit;

CONSIDÉRANT qu'il est reconnu que les droits de l'homme doivent être garantis par la prééminence du droit et que ces principes ont été confirmés au Nouveau-Brunswick par un certain nombre de dispositions législatives édictées par sa Législature;

ET CONSIDÉRANT qu'il est opportun d'édicter une loi visant à codifier et étendre ces dispositions et à simplifier leur application;

À CES CAUSES: Sa Majesté, sur l'avis et du consentement de l'Assemblée législative du Nouveau-Brunswick, décrète:

1 La présente loi peut être citée sous le titre de: *Code des droits de l'homme*. 1971, c.8, art.1.

2 Dans la présente loi

«âge» signifie âgé de dix-neuf ans et plus;

«agence de placement» comprend une personne qui entreprend, avec ou sans rémunération, de fournir des employés à des employeurs ainsi qu'une personne qui entreprend, avec ou sans rémunération, de procurer un emploi à des personnes;

«association d'affaires ou de métiers» désigne une organisation de personnes qui, par disposition

occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or any space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building or other structure or in a part thereof;

“Commission” means the New Brunswick Human Rights Commission;

“employer” includes every person, firm, corporation, agent, manager, representative, contractor, or sub-contractor having control or direction of, or being responsible, directly or indirectly, for the employment of any person;

“employers’ organization” means an organization of employers formed for purposes that include the regulation of relations between employers and employees;

“employment agency” includes a person who undertakes with or without compensation to procure employees for employers and a person who undertakes with or without compensation to procure employment for persons;

“Minister” means the Minister of Labour and includes anyone designated by the Minister to act on his behalf;

“person”, in addition to the extended meaning given by the *Interpretation Act*, includes an employment agency, an employers’ organization and a trade union;

“physical disability” means any degree of infirmity, malformation or disfigurement of the body suffered by a person as a result of injury, illness or birth defect, and includes any handicap resulting from epilepsy, paralysis, lack of coordination, amputation, blindness, deafness, muteness or reliance upon a seeing-eye dog, a wheelchair, a cane or crutch or any other remedial appliance or device; 1976, c.31, s.1.

“professional association” means an organization of persons that by an enactment, agreement or custom has power to admit, suspend, expel, or direct persons in the practice of any occupation or calling;

législative, convention ou coutume, a le pouvoir d’admettre, de suspendre, d’expulser ou de diriger des particuliers quant à une affaire ou un métier;

«association professionnelle» désigne une organisation de personnes qui, par disposition législative, convention ou coutume, a le pouvoir d’admettre, de suspendre, d’expulser ou de diriger des particuliers quant à l’exercice d’une profession;

«commission» désigne une commission d’enquête;

«Commission» désigne la Commission des droits de l’homme du Nouveau-Brunswick;

«employeur» comprend toute personne, firme, corporation, tout mandataire, gérant, représentant, entrepreneur ou sous-entrepreneur qui contrôle ou dirige l’emploi d’un particulier ou qui en est responsable, soit directement, soit indirectement;

«établissement commercial» désigne un immeuble ou toute autre construction ou l’une de ses parties, qui est utilisé ou occupé ou qui est prévu, aménagé ou conçu pour être utilisé ou occupé en vue de fabriquer, de vendre, de revendre, de transformer, de retransformer, d’exposer, d’entreposer, de manutentionner, de remiser ou d’écouler des biens personnels, ou tout lieu qui est utilisé ou occupé ou qui est prévu, aménagé ou conçu pour être utilisé ou occupé à titre d’établissement ou de bureau commercial ou professionnel distinct dans un immeuble ou toute autre construction ou dans l’une de ses parties;

«incapacité physique» désigne toute infirmité, malformation ou altération esthétique corporelle, quelle qu’en soit la gravité, due à une lésion, à une maladie ou à une anomalie congénitale et s’entend également de tout handicap qui résulte de l’épilepsie, d’une paralysie, d’un manque de coordination, d’une amputation, de la cécité, de la mutité, de la surdité ou de la nécessité d’utiliser un chien-guide, un fauteuil roulant, une canne, une béquille ou tout autre appareil ou dispositif de correction; 1976, c.31, art.1.

«Ministre» désigne le ministre du Travail et s’entend également de toute personne qu’il désigne pour le représenter;

«organisation patronale» désigne une organisa-



### *Human Rights Act*

“trade union” means an organization of employees formed for purposes that include the regulation of relations between employees and employers. 1971, c.8, s.2; 1973, c.45, s.2.

3(1) No employer, employers' organization or other person acting on behalf of an employer shall

(a) refuse to employ or continue to employ any person, or

(b) discriminate against any person in respect of employment or any term or condition of employment,

because of race, color, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1976, c.31, s.2.

3(2) No employment agency shall, because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex, discriminate against any person seeking employment. 1976, c.31, s.2.

3(3) No trade union or employers' organization shall

(a) exclude any person from full membership,

(b) expel, suspend or otherwise discriminate against any of its members, or

(c) discriminate against any person in respect of his employment by an employer,

tion d'employeurs dont les objectifs comprennent la réglementation des relations entre employeurs et employés;

«personne», en plus d'avoir le sens étendu que lui donne la *Loi d'interprétation*, comprend une agence de placement, une organisation patronale et un syndicat ouvrier;

«syndicat ouvrier» désigne une organisation d'employés dont les objectifs comprennent la réglementation des relations entre employés et employeurs. 1971, c.8, art.2; 1973, c.45, art.2.

3(1) Aucun employeur, aucune organisation patronale ni aucune autre personne agissant pour le compte d'un employeur ne doit

a) refuser d'employer ou de continuer d'employer une personne, ni

b) faire preuve de discrimination envers une personne en matière d'emploi ou quant aux modalités ou conditions d'emploi,

en raison de sa race, de sa couleur, de sa croyance, de son origine nationale, de son ascendance, de son lieu d'origine, de son âge, de son incapacité physique, de son état matrimonial ou de son sexe. 1976, c.31, art.2.

3(2) Aucune agence de placement ne doit faire preuve de discrimination envers une personne en quête d'un emploi en raison de sa race, de sa couleur, de sa croyance, de son origine nationale, de son ascendance, de son lieu d'origine, de son âge, de son incapacité physique, de son état matrimonial ou de son sexe. 1976, c.31, art.2.

3(3) Aucun syndicat ouvrier ni aucune organisation patronale ne doit

a) refuser à une personne la pleine qualité de membre,

b) expulser ou suspendre l'un de ses membres ou prendre toute autre mesure discriminatoire à son égard, ni

c) faire preuve de discrimination envers une personne quant à son embauchage par un employeur.

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because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1976, c.31, s.2.

## 3(4) No person shall

(a) use or circulate any form of application for employment,

(b) publish or cause to be published any advertisement in connection with employment, or

(c) make any oral or written inquiry in connection with employment,

that expresses either directly or indirectly any limitation, specification or preference, or requires an applicant to furnish any information as to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex.

*Am.1974, c.20(Supp.), s.1; 1976, c.31, s.2.*

3(5) Notwithstanding subsections (1), (2), (3) and (4), a limitation, specification or preference on the basis of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex shall be permitted if such limitation, specification or preference is based upon a *bona fide* occupational qualification as determined by the Commission.1976, c.31, s.2.

3(6) The provisions of subsections (1), (2), (3) and (4) as to age do not apply to

(a) the termination of employment or a refusal to employ because of the terms or conditions of any *bona fide* retirement or pension plan;

(b) the operation of the terms or conditions of any *bona fide* retirement or pension plan that have the effect of a minimum service requirement; or

en raison de sa race, de sa couleur, de sa croyance, de son origine nationale, de son ascendance, de son lieu d'origine, de son âge, de son incapacité physique, de son état matrimonial ou de son sexe. 1976, c.31, art.2.

## 3(4) Nul ne doit

a) utiliser ni mettre en circulation des formules de demande d'emploi,

b) publier ou faire publier des annonces relativement à un emploi, ni

c) faire des enquêtes, de vive voix ou par écrit, relativement à un emploi,

si ces formules, annonces ou enquêtes expriment directement ou indirectement une restriction, une condition ou une préférence ou obligent un candidat à fournir des renseignements quant à sa race, sa couleur, sa croyance, son origine nationale, son ascendance, son lieu d'origine, son âge, son incapacité physique, son état matrimonial ou son sexe. *Mod.1974, c.20(Supp.), art.1; 1976, c.31, art.2.*

3(5) Nonobstant les paragraphes (1), (2), (3) et (4), une restriction, condition ou préférence reposant sur la race, la couleur, la croyance, l'origine nationale, l'ascendance, le lieu d'origine, l'âge, l'incapacité physique, l'état matrimonial ou le sexe est autorisée si elle se fonde sur des qualifications professionnelles réellement requises, selon ce que détermine la Commission.1976, c.31, art.2.

3(6) Les dispositions des paragraphes (1), (2), (3) et (4) quant à l'âge ne s'étendent pas

a) à la cessation d'emploi ou au refus d'emploi en raison des modalités ou conditions d'un régime de retraite ou de pension effectif;

b) à l'application des modalités ou conditions d'un régime de retraite ou de pension effectif qui ont pour effet d'exiger un nombre minimal d'années de services; ni

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(c) the operation of terms or conditions of any *bona fide* group or employee insurance plan. 1976, c.31, s.2.

c) à l'application des modalités ou conditions d'un régime d'assurance-groupe ou d'assurance-salariés effectif. 1976, c.31, art.2.

3(7) The provisions of subsections (1), (2), (3) and (4) as to physical disability do not apply to

3(7) Les dispositions des paragraphes (1), (2), (3) et (4) quant à l'incapacité physique ne s'étendent

(a) the termination of employment or a refusal to employ because of a *bona fide* qualification based on the nature of the work or the circumstance of the place of work in relation to the physical disability, as determined by the Commission; or

a) ni à la cessation d'emploi ou au refus d'emploi pour incapacité physique en raison d'une qualification réellement requise qui se fonde sur la nature du travail ou le cadre du lieu de travail, selon ce que détermine la Commission;

(b) the operation of terms or conditions of any *bona fide* group or employee insurance plan. 1971, c.8, s.3; 1973, c.45, s.3; 1976, c.31, s.2.

b) ni à l'application des modalités et conditions d'un régime d'assurance-groupe ou d'assurance-salariés effectif. 1971, c.8, art.3; 1973, c.45, art.3; 1976, c.31, art.2.

4(1) No person directly or indirectly, alone or with another, by himself or by the interposition of another, shall

4(1) Nul ne doit, directement ou indirectement, seul ou avec un autre, personnellement ou par l'intermédiaire d'un tiers,

(a) deny to any person or class of persons the right to occupy any commercial unit or dwelling unit, or

a) refuser à une personne ou à une catégorie de personnes le droit d'occuper un établissement commercial ou un logement, ni

(b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any dwelling unit,

b) faire preuve de discrimination envers une personne ou une catégorie de personnes quant aux modalités ou conditions d'occupation d'un établissement commercial ou d'un logement,

because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1976, c.31, s.2.

pour des raisons de race, de couleur, de croyance, d'origine nationale, d'ascendance, de lieu d'origine, d'âge, d'incapacité physique, d'état matrimonial ou de sexe. 1976, c.31, art.2.

4(2) No person who offers to sell property or any interest in property shall

4(2) Aucune personne offrant de vendre un bien ou un droit portant sur un bien, ne doit

(a) refuse to offer to purchase the

a) refuser une offre d'achat de ce bien ou



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property or interest made by a person or class of persons,

(b) discriminate against any person or class of persons with respect to any term or condition of the sale of any property or interest in property.

because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1976, c.31, s.2.

4(3) No person shall impose, enforce or endeavour to impose or enforce, any term or condition on any conveyance, instrument or contract, whether written or oral, that restricts the right of any person or class of persons, with respect to property because of race, colour, religion, national origin, ancestry, place of origin, physical disability or sex. 1976, c.31, s.2.

4(4) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability or marital status shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a *bona fide* qualification as determined by the Commission. 1971, c.8, s.4; 1973, c.45, s.4; 1976, c.31, s.2.

5(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

(a) deny to any person or class of persons the accommodation, services, or facilities available in any place to which the public is customarily admitted, or

(b) discriminate against any person or class of persons with respect to the accommodations, services, or facilities

de ce droit faite par une personne ou une catégorie de personnes.

b) faire preuve de discrimination envers une personne ou une catégorie de personnes quant aux modalités ou conditions de vente d'un bien ou d'un droit portant sur un bien.

pour des raisons de race, de couleur, de croyance, d'origine nationale, d'ascendance, de lieu d'origine, d'âge, d'incapacité physique, d'état matrimonial ou de sexe. 1976, c.31, art.2.

4(3) Aucune personne ne doit imposer ou appliquer ni tâcher d'imposer ou d'appliquer dans un acte de transfert, dans un document ou dans un contrat, que ce soit par écrit ou oralement, des modalités ou des conditions qui restreignent les droits d'une personne ou d'une catégorie de personnes relativement à un bien, pour des raisons de race, de couleur, de croyance, d'origine nationale, d'ascendance, de lieu d'origine, d'incapacité physique, ou de sexe. 1976, c.31, art.2.

4(4) Nonobstant le paragraphe (1), une restriction, condition, exclusion, préférence ou un refus fondé sur le sexe, une incapacité physique, ou l'état matrimonial est autorisé si cette restriction, condition, exclusion ou préférence ou ce refus est fondé sur une qualification réellement requise, selon ce que détermine la Commission. 1971, c.8, art.4; 1973, c.45, art.4; 1976, c.31, art.2.

5(1) Nul ne doit, directement ou indirectement, seul ou avec un autre, personnellement ou par l'intermédiaire d'un tiers,

a) refuser à une personne ou à une catégorie de personnes le logement, les services ou les commodités qui se trouvent dans un endroit où le public est habituellement admis, ni

b) faire preuve de discrimination envers une personne ou une catégorie de personnes quant au logement, aux services

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available in any place to which the public is customarily admitted.

et aux commodités qui se trouvent dans un endroit où le public est habituellement admis,

because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1976, c.31, s.2.

pour des raisons de race, de couleur, de croyance, d'origine nationale, d'ascendance, de lieu d'origine, d'âge, d'incapacité physique, d'état matrimonial ou de sexe. 1976, c.31, art.2.

5(2) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability or marital status shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a *bona fide* qualification as determined by the Commission. 1971, c.8, s.5; 1973, c.45, s.5; 1976, c.31, s.2.

5(2) Nonobstant le paragraphe (1), une restriction, condition, exclusion ou préférence ou un refus fondé sur le sexe, une incapacité physique ou l'état matrimonial est autorisé si cette restriction, condition, exclusion ou préférence ou ce refus est fondé sur une qualification réellement requise, selon ce que détermine la Commission. 1971, c.8, art.5; 1973, c.45, art.5; 1976, c.31, art.2.

6(1) No person shall

6(1) Nul ne doit

(a) publish, display, or cause to be published or displayed, or

a) publier, exposer ni faire publier ou exposer, ni

(b) permit to be published or displayed on lands or premises, in a newspaper, through a television or radio broadcasting station, or by means of any other medium that he owns or controls.

b) permettre de publier ou d'exposer à l'extérieure ou dans des locaux, dans un journal, par une station de télévision ou de radiodiffusion, ou par tout autre médium d'information qu'il possède ou dirige,

any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1976, c.31, s.2.

un avis, signe, symbole, emblème ou toute autre représentation indiquant une discrimination ou une intention de faire preuve de discrimination envers une personne ou une catégorie de personnes, pour un motif fondé sur la race, la couleur, l'origine nationale, la croyance, l'ascendance, le lieu d'origine, l'âge, l'incapacité physique, l'état matrimonial ou le sexe. 1976, c.31, art.2.

6(2) Nothing in this section interferes with, restricts, or prohibits the free expression of opinions upon any subject by speech or in writing. 1976, c.31, s.2.

6(2) Aucune disposition du présent article n'entrave, ne restreint ni n'interdit la libre expression verbale ou écrite d'opinions sur quelque sujet que se soit. 1976, c.31, art.2.

6(3) Notwithstanding subsection (1), a limitation, specification, exclusion, denial or preference because of sex, physical disability or marital status shall be permitted if such limitation, specification, exclusion, denial or preference is based upon a *bona fide*

6(3) Nonobstant le paragraphe (1), une restriction, condition, exclusion ou préférence ou un refus fondé sur le sexe, sur une incapacité physique ou l'état matrimonial est autorisé si cette restriction, condition, exclusion ou préférence ou ce refus est fondé

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qualification as determined by the Commission. 1971, c.8, s.6; 1973, c.45, s.6; 1976, c.31, s.2.

7(1) No professional association or business or trade association shall exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1976, c.31, s.2.

7(2) Nothing in this section affects the application of any statutory provision restricting membership in a professional association or business or trade association to Canadian citizens or British subjects. 1971, c.8, s.7; 1973, c.45, s.7; 1976, c.31, s.2.

8 No person shall discharge, refuse to employ, exclude, expel, suspend, deny, evict or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation, inquiry or prosecution of a complaint or other proceeding under this Act. 1971, c.8, s.8.

9 This Act binds the Crown in right of the Province. 1971, c.8, s.9.

10(1) There shall be a Commission to be known as New Brunswick Human Rights Commission.

10(2) The Commission shall be composed of three or more members as may be fixed by the Lieutenant-Governor in Council.

10(3) The members of the Commission shall be appointed by the Lieutenant-Governor in Council.

10(4) The Lieutenant-Governor in Council may designate one of the members as Chairman.

sur une qualification réellement requise, selon ce que détermine la Commission. 1971, c.8, art.6; 1973, c.45, art.6; 1976, c.31, art.2.

7(1) Aucune association professionnelle ni aucune association d'affaires ou de métiers ne doit refuser à une personne la pleine qualité de membre ni expulser ou suspendre l'un de ses membres ou prendre toute autre mesure discriminatoire à son égard en raison de sa race, de sa couleur, de sa croyance, de son origine nationale, de son ascendance, de son lieu d'origine, de son âge, de son incapacité physique, de son état matrimonial ou de son sexe. 1976, c.31, art.2.

7(2) Aucune disposition du présent article ne fait obstacle à l'application d'une disposition édictée par la loi restreignant aux citoyens canadiens ou aux sujets britanniques l'adhésion à une association professionnelle ou à une association d'affaires ou de métiers. 1971, c.8, art.7; 1973, c.45, art.7; 1976, c.31, art.2.

8 Nul ne doit refuser d'employer une personne, la congédier, l'exclure, l'expulser, la suspendre, la tenir à l'écart, l'évincer ni exercer toute autre forme de discrimination à son égard parce qu'elle a porté plainte ou témoigné ou prêté son concours, de quelque manière que ce soit, à l'introduction, à l'examen ou à la poursuite d'une plainte ou de toute autre procédure en vertu de la présente loi. 1971, c.8, art.8.

9 La présente loi lie la Couronne du chef de la province. 1971, c.8, art.9.

10(1) Il est créé une Commission appelée la Commission des droits de l'homme du Nouveau-Brunswick.

10(2) La Commission se compose de trois membres ou plus, selon ce que décide le lieutenant-gouverneur en conseil.

10(3) Le lieutenant-gouverneur en conseil nomme les membres de la Commission.

10(4) Le lieutenant-gouverneur en conseil peut désigner un des membres au poste de président.



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10(5) The Lieutenant-Governor in Council may fix the remuneration of the members of the Commission. 1971, c.8, s.10.

11 The Commission is responsible to the Minister for the administration of this Act. 1971, c.8, s.11.

12 The Commission has the power to administer this Act and without limiting the generality of the foregoing, it is the function of the Commission

(a) to forward the principle that every person is free and equal in dignity and rights without regard to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex;

(b) to promote an understanding of, acceptance of, and compliance with this Act, and

(c) to develop and conduct educational programmes designed to eliminate discriminatory practices related to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, marital status or sex. 1971, c.8, s.12; 1973, c.45, s.8; 1976, c.31, s.2.

13(1) On the application of any person, or on its own initiative, the Commission may approve a programme to be undertaken by any person designed to promote the welfare of any class of persons.

13(2) At any time before or after approving a programme, the Commission may

(a) make inquiries concerning the programme,

(b) vary the programme,

(c) impose conditions on the programme, or

(d) withdraw approval of the programme,

as the Commission thinks fit.

10(5) Le lieutenant-gouverneur en conseil peut fixer la rémunération des membres de la Commission. 1971, c.8, art.10.

11 La Commission rend compte au Ministre de l'application de la présente loi. 1971, c.8, art.11.

12 La Commission a le pouvoir d'appliquer la présente loi et, sans limiter la portée générale de ce qui précède, il lui incombe

a) de mettre en oeuvre le principe selon lequel tous les hommes sont libres et égaux en dignité et en droits, sans distinction de race, de couleur, de croyance, d'origine nationale, d'ascendance, de lieu d'origine, d'âge, d'incapacité physique, d'état matrimonial ou de sexe;

b) de favoriser la compréhension, l'acceptation et l'observation de la présente loi; et

c) d'élaborer et de diriger des programmes éducatifs visant à éliminer les pratiques discriminatoires fondées sur la race, la couleur, la croyance, l'origine nationale, l'ascendance, le lieu d'origine, l'âge, l'incapacité physique, l'état matrimonial ou le sexe. 1971, c.8, art.12; 1973, c.45, art.8; 1976, c.31, art.2.

13(1) La Commission peut, de sa propre initiative ou à la demande d'une personne, approuver un programme qu'une personne entreprend en vue de favoriser le bien-être d'une catégorie de personnes.

13(2) La Commission peut, à tout moment, avant ou après l'approbation d'un programme,

a) faire enquête à son sujet,

b) le modifier,

c) l'assortir de conditions, ou

d) retirer son approbation,

ainsi qu'elle le juge bon.

*Loi sur les droits de l'homme*

13(3) Anything done in accordance with a programme approved pursuant to this section is not a violation of the provisions of this Act. 1971, c.8, s.13.

14 The Lieutenant-Governor in Council may appoint a secretary and such other officers, clerks and servants of the Commission as are deemed appropriate. 1971, c.8, s.14.

15 The cost of the administration of this Act is payable out of the Consolidated Fund. 1971, c.8, s.15.

16 The Lieutenant-Governor in Council may make regulations respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1971, c.8, s.16.

17 Any person claiming to be aggrieved because of an alleged violation of this Act may make a complaint in writing to the Commission in a form prescribed by the Commission. 1971, c.8, s.17.

18(1) The Commission itself or through any person designated so to do shall inquire into any complaint made pursuant to section 17 and shall endeavour to effect a settlement of the matter complained of.

18(2) If, in the opinion of the Commission, a complaint is without merit, the Commission may dismiss the complaint at any stage of the proceedings. 1971, c.8, s.18.

19 The Commission may, either by any member thereof designated in writing by the Minister, or any other person so designated in writing,

(a) inspect and examine any book, payroll, personnel record, register, notice, document, and any other record of any person that in any way relates to

(i) the wages, hours of labour, or conditions of employment affecting any person,

(ii) membership of any person in or application by any person for membership in a

13(3) Rien de ce qui est fait dans le cadre d'un programme approuvé conformément au présent article ne constitue une violation des dispositions de la présente loi. 1971, c.8, art.13.

14 Le lieutenant-gouverneur en conseil peut nommer un secrétaire et les autres fonctionnaires, commis et employés de la Commission qui sont jugés utiles. 1971, c.8, art.14.

15 Les frais d'application de la présente loi sont mis à la charge du Fonds consolidé. 1971, c.8, art.15.

16 Le lieutenant-gouverneur en conseil peut établir des règlements concernant tout ce qui est nécessaire ou opportun pour réaliser efficacement l'objet et les fins de la présente loi. 1971, c.8, art.16.

17 Toute personne qui se prétend lésée par suite d'une violation présumée de la présente loi peut présenter une plainte par écrit à la Commission dans les formes que celle-ci a prescrites. 1971, c.8, art.17.

18(1) La Commission doit, elle-même ou par l'intermédiaire d'une personne désignée à cet effet, examiner toute plainte présentée aux termes de l'article 17 et elle doit s'efforcer de parvenir à un règlement de la question faisant l'objet de la plainte.

18(2) Si la Commission estime une plainte non-fondée, elle peut la rejeter à toute étape des procédures. 1971, c.8, art.18.

19 La Commission peut, par l'intermédiaire soit de l'un de ses membres que le Ministre aura désigné par écrit, soit de toute autre personne ainsi désignée par écrit,

a) contrôler et examiner tout livre, toute feuille de paye, tout rôle du personnel, registre, avis, document ou tout autre dossier d'une personne qui a trait de quelque façon que ce soit

(i) aux salaires, aux heures de travail ou aux conditions d'emploi touchant une personne,

(ii) à l'adhésion ou à la demande d'adhésion d'une personne à un syndicat ouvrier, à une

### *Human Rights Act*

trade union, employers' organization, professional association, or business or trade association,

(iii) the accommodation, services, or facilities available in any place to which the public is customarily admitted, and

(iv) the occupancy of any commercial unit or dwelling unit;

(b) take extracts from or make copies of any entry in any book, payroll, personnel record, register, notice, document, or record referred to in paragraph (a);

(c) require any person to make or furnish full and correct statements, either orally or in writing in whatever form is required respecting matters referred to in paragraph (a) and, in the discretion of the member of the Commission or person so authorized, require the statements to be made by the person on oath, or verified by affidavit;

(d) require any person to make full disclosure, production, or delivery to the Commission, or to the person so authorized, of

(i) any record, document, statement, writing, book, paper, extract therefrom, or copy thereof that the person has in his possession or control, or

(ii) other information, either oral or in writing and either verified on oath or otherwise as may be directed,

that may in any way relate to matters referred to in paragraph (a);

(e) make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act have been complied with;

(f) exercise such other powers as may be necessary for carrying this Act and any regulations into effect; and

(g) administer all oaths and take all affidavits required or authorized and to summon any person to give evidence in connection with any investigation, inquiry, or examination. 1971, c.8, s.19.

organisation patronale, à une association professionnelle ou à une association d'affaires ou de métiers,

(iii) au logement, aux services ou aux commodités qui se trouvent dans un endroit où le public est habituellement admis, et

(iv) à l'occupation d'un établissement commercial ou d'un logement;

b) prendre des extraits ou copies de toute inscription dans un livre, une feuille de paye, un rôle du personnel, un registre, un avis, un document ou tout autre dossier mentionné à l'alinéa a);

c) imposer à une personne l'obligation de faire ou de fournir des déclarations complètes et exactes, soit de vive voix, soit par écrit, dans les formes requises, en ce qui concerne les questions mentionnées à l'alinéa a), et à la discrétion du membre de la Commission ou de la personne ayant reçu l'autorisation voulue, exiger que les déclarations soient faites sous serment ou confirmées par affidavit;

d) exiger d'une personne qu'elle divulgue, produise ou remette dans leur entier à la Commission ou à la personne autorisée,

(i) les dossiers, documents, déclarations, écrits, livres, pièces, extraits ou copies de ceux-ci, que cette personne possède ou détient, ou

(ii) tous autres renseignements, verbaux ou écrits, attestés sous serment ou de toute autre manière prescrite,

qui peuvent, de quelque façon que ce soit, se rapporter aux questions mentionnées à l'alinéa a);

e) procéder aux interrogatoires et aux enquêtes nécessaires pour s'assurer de l'observation des dispositions de la présente loi;

f) exercer tous les autres pouvoirs qui pourraient être nécessaires pour la mise en oeuvre des dispositions de la présente loi et des règlements qui s'y rattachent; et

g) faire prêter tous les serments et recevoir tous les affidavits prescrits ou autorisés et convoquer toute personne pour déposer relativement à une investigation, à une enquête ou à un interrogatoire. 1971, c.8, art.19.



*Loi sur les droits de l'homme*

20(1) If the Commission is unable to effect a settlement of the matter complained of, the Minister may on the recommendation of the Commission appoint a Board of Inquiry composed of one or more persons to investigate the matter and shall forthwith communicate the names of the members of the Board to the parties to the complaint, and thereupon it shall be presumed conclusively that the Board was appointed in accordance with this Act.

20(2) If the Board of Inquiry is composed of more than one member, the Minister shall appoint a member to be chairman thereof.

20(3) The Board has all the powers of a Conciliation Board under the *Industrial Relations Act*.

20(4) The Board shall give the parties full opportunity to present evidence and to make submissions and, if it finds that the complaint is supported by the evidence, shall recommend to the Commission the course that ought to be taken with respect to the complaint.

20(5) If the Board is composed of more than one person the recommendations of the majority are the recommendations of the Board.

20(6) After the Board has made its recommendations, the Commission may direct it to clarify or amplify any of them and the recommendations shall be deemed not to have been received by the Commission until they have been so clarified or amplified.

20(7) The Lieutenant-Governor in Council may determine the rate of remuneration of the chairman and members of the Board of Inquiry appointed under this section. 1971, c.8, s.20.

21(1) Upon receipt of the recommendations of the Board of Inquiry the Commission

- (a) shall furnish a copy thereof to each of the persons affected,
- (b) may, if the Minister deems it advisable, publish the recommendations in such manner as it sees fit, and
- (c) may issue whatever order it deems necessary to carry into effect the recommendations of the Board.

20(1) Si la Commission se trouve dans l'impossibilité de parvenir à un règlement de la question faisant l'objet de la plainte, le Ministre peut, sur la recommandation de la Commission, nommer une commission d'enquête composée d'une ou plusieurs personnes pour étudier la question; le Ministre doit sans délai communiquer les noms des membres de la commission aux parties en cause et, dès lors, la commission est péremptoirement présumée avoir été nommée en conformité de la présente loi.

20(2) Si la commission d'enquête se compose de plus d'une personne, le Ministre nomme l'un des membres comme président.

20(3) La commission d'enquête détient tous les pouvoirs que la *Loi sur les relations industrielles* confère à une commission de conciliation.

20(4) La commission d'enquête doit fournir aux parties l'occasion de présenter leurs moyens de preuve et de faire des observations et, si elle constate que la plainte est fondée, elle doit recommander à la Commission des droits de l'homme les mesures que la plainte justifie.

20(5) Si la commission d'enquête se compose de plus d'une personne, ses recommandations doivent être adoptées à la majorité de ses membres.

20(6) Après que la commission d'enquête a formulé ses recommandations, la Commission peut l'inviter à les préciser ou développer et elles ne seront considérées comme ayant été reçues par la Commission qu'après avoir été ainsi précisées ou développées.

20(7) Le lieutenant-gouverneur en conseil peut fixer la rémunération du président et des membres de la commission d'enquête nommée en application du présent article. 1971, c.8, art.20.

21(1) Dès réception des recommandations de la commission d'enquête, la Commission

- a) doit en fournir une copie à chacune des personnes en cause,
- b) peut les publier, si le Ministre le juge souhaitable, de la manière qu'elle pense appropriée, et
- c) peut rendre toute ordonnance qu'elle estime nécessaire pour leur donner effet.

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21(2) Every order made pursuant to paragraph (1)(c) is final and every person in respect of whom the order is made shall comply therewith. 1971, c.8, s.21.

22 Where a Board of Inquiry is appointed with respect to an alleged violation of section 3 or an alleged violation of section 8 in relation to employment, the recommendations of the Board and the order of the Commission may include reinstatement of the aggrieved person in his employment, with or without compensation for loss of employment. 1971, c.8, s.22.

23 Every person who fails to comply with any provision of this Act or with any order made under this Act is guilty of an offence and on summary conviction is liable

(a) if an individual, to a penalty of not more than five hundred dollars, or

(b) if a corporation, trade union, employers' organization, employment agency, professional association or business or trade association, to a penalty of not more than two thousand dollars. 1971, c.8, s.23.

24 No person shall institute a prosecution for an offence under this Act unless the Minister consents thereto in writing. 1971, c.8, s.24.

25 Where an employer is convicted of a violation of section 3 or a violation of section 8 in relation to employment, the judge, in addition to any other penalty,

(a) may order the employer to pay the aggrieved person compensation for loss of employment not exceeding such sum as in the opinion of the judge is equivalent to the wages, salary or remuneration that would have accrued to that person up to the date of conviction but for such violation of section 3 or 8; and

(b) may order the employer to reinstate the aggrieved person in his employ at such date as in the opinion of the judge is just and proper under the circumstances, in the position that that person would have held but for violation of section 3 or 8. 1971, c.8, s.25.

21(2) Toute ordonnance rendue conformément à l'alinéa (1)c) est définitive et toute personne qui en fait l'objet doit s'y conformer. 1971, c.8, art.21.

22 Lorsqu'une commission d'enquête est nommée pour connaître d'une violation présumée aux articles 3 ou 8 en matière d'emploi, les recommandations de la commission d'enquête et l'ordonnance de la Commission peuvent inclure la réintégration de la personne lésée, avec ou sans indemnité pour perte d'emploi. 1971, c.8, art.22.

23 Quiconque néglige de se conformer à une disposition de la présente loi ou à une ordonnance rendue sous son régime est coupable d'une infraction et est passible, sur déclaration sommaire de culpabilité,

a) dans le cas d'un particulier, d'une amende de cinq cents dollars au plus, ou

b) dans le cas d'une corporation, d'un syndicat ouvrier, d'une organisation patronale, d'une agence de placement, d'une association professionnelle ou d'une association d'affaires ou de métiers, d'une amende de deux mille dollars au plus. 1971, c.8, art.23.

24 Nul ne doit tenter une poursuite à raison d'une infraction prévue par la présente loi sans le consentement écrit du Ministre. 1971, c.8, art.24.

25 Lorsqu'un employeur est déclaré coupable d'une infraction aux articles 3 ou 8 en matière d'emploi, le juge peut, en plus de toute autre peine,

a) ordonner à l'employeur de verser à la personne lésée, une indemnité pour perte d'emploi dont le montant ne dépassera pas la somme que le juge estime équivalente aux salaires, au traitement ou à la rémunération qui auraient été dus à cette personne jusqu'à la date de la déclaration de culpabilité, au cas où il n'y aurait pas eu violation des articles 3 ou 8; et

b) ordonner à l'employeur de réintégrer la personne lésée, à la date que le juge estime équitable et opportune dans les circonstances, dans le poste qu'elle aurait occupé au cas où il n'y aurait pas eu violation des articles 3 ou 8. 1971, c.8, art.25.

*Loi sur les droits de l'homme*

26 A prosecution for an offence under this Act may be instituted against a trade union, employers' organization, employment agency, professional association, or business or trade association in the name of the union, organization, agency or association and any act or thing done or omitted to be done by an officer, official or agent of a trade union, employers' organization, employment agency, professional association, or business or trade association within the scope of his authority to act on behalf of the union, organization, agency or association shall be deemed to be an act or thing done or omitted to be done by the union, organization, agency or association. 1971, c.8, s.26.

27(1) Where a person has been convicted of a violation of this Act the Minister may apply by way of originating summons to a judge of the **Court of Queen's Bench of New Brunswick** for an order enjoining such person from continuing such violation.

27(2) The judge in his discretion may make such order and the order may be enforced in the same manner as any other order and judgment of the **Court of Queen's Bench of New Brunswick**. 1971, c.8, s.27; 1979, c.41, s.63.

26 Une poursuite à raison d'une infraction prévue par la présente loi peut être intentée nominalement contre un syndicat ouvrier, une organisation patronale, une agence de placement, une association professionnelle ou une association d'affaires ou de métiers; les actes ou omissions d'un fonctionnaire, d'un dirigeant ou d'un représentant d'un syndicat ouvrier, d'une organisation patronale, d'une agence de placement, d'une association professionnelle ou d'une association d'affaires ou de métiers, dans les limites de ses pouvoirs d'agir pour le compte du syndicat, de l'organisation, de l'agence ou de l'association, sont réputés être des actes ou omissions du syndicat, de l'organisation, de l'agence ou de l'association. 1971, c.8, art.26.

27(1) Lorsqu'une personne a été déclarée coupable d'une violation de la présente loi, le Ministre peut, par voie d'assignation introductive d'instance, demander à un juge de la Cour du **Banc de la Reine du Nouveau-Brunswick** de rendre une ordonnance enjoignant à cette personne de mettre fin à cette violation.

27(2) Le juge peut, à sa discrétion, rendre une telle ordonnance, qui sera exécutée de la même manière que toute autre ordonnance ou tout autre jugement de la Cour du **Banc de la Reine du Nouveau-Brunswick**. 1971, c.8, art.27; 1979, c.41, art.63.



**Right to Information Act**

S.N.B. 1978, c. R-10.3;  
R.S.N.B. 1973, c. R-10.3

with amendments to date, including  
1979, c. 41

**Loi sur le droit à  
l'information**

L.N.-B. 1978, c. R-10.3  
L.R.N.-B. 1973, c. R-10.3

et ses modifications à jour, y inclus  
1979, c. 41

*Assented to June 28, 1978*

Her Majesty, by and with the advice and consent  
of the Legislative Assembly of New Brunswick,  
enacts as follows:

**1 In this Act**

“appropriate Minister” means the Minister  
responsible for the administration of the depart-  
ment in which the information is kept or filed, and  
in the case where a minister is not responsible for  
the administration of a department, means the  
person responsible for such department in the  
Legislative Assembly;

“department” means

(a) any department of the Government of the  
Province;

(b) any Crown Agency or Crown Corporation;

(c) any other branch of the public service;

(d) any body or office, not being part of the  
public service, the operation of which is effected  
through money appropriated for the purpose  
and paid out of the Consolidated Fund,

as set out in the regulations;

“document” includes any record of informa-  
tion, however recorded or stored, whether in  
printed form, on film, by electronic means or  
otherwise;

*Sanctionnée le 28 juin 1978*

Sa Majesté, sur l'avis et du consentement de  
l'Assemblée législative du Nouveau-Brunswick  
décrète:

**1 Dans la présente loi**

«affaires publiques» désigne toute activité ou  
fonction exercée ou accomplie par un ministère;

«document» comprend toute information,  
quelle que soit la manière dont elle est consignée  
ou conservée, que ce soit sous une forme im-  
primée, sur film, au moyen de système électro-  
nique ou autrement;

«information» désigne une information con-  
tenue dans un document;

«ministère» désigne

a) tout ministère du gouvernement de la pro-  
vince;

b) tout organisme ou corporation de la  
Couronne;

c) toute autre direction des services publics; et

d) tout organisme ou bureau qui ne fait pas  
partie des services publics mais dont le fonction-  
nement est assuré par des crédits votés à cet ef-  
fet et imputés sur le Fonds consolidé,

dont le nom figure dans les règlements;

*Loi sur le droit à l'information*

“information” means information contained in a document;

“personal information” means information respecting a person’s identity, residence, dependents, marital status, employment, borrowing and repayment history, income, assets and liabilities, credit worthiness, education, character, reputation, health, physical or personal characteristics or mode of living;

“public business” means any activity or function carried on or performed by a department.

2 Subject to this Act, every person is entitled to request and receive information relating to the public business of the Province.

3(1) Any person may request information by applying to the minister of the department where the information is likely to be kept or filed, and the appropriate Minister shall in writing within thirty days of the receipt of the application grant or deny the request.

3(2) The application shall specify the documents containing the information requested or where the document in which the relevant information may be contained is not known to the applicant, specify the subject-matter of the information requested with sufficient particularity as to time, place and event to enable a person familiar with the subject-matter to identify the relevant document.

3(3) Where the document in which the information requested is unable to be identified the appropriate Minister shall so advise the applicant in writing and shall invite the applicant to supply additional information that might lead to identification of the relevant document.

3(4) Where a minister receives a request for information that is not kept or filed in the department for which he is appointed, he shall, in writing, notify the applicant of such fact and advise the applicant of the department in which the information may be kept or filed.

«ministre compétent» désigne le ministre responsable de la direction du ministère qui garde ou qui est dépositaire de l'information, et, lorsque la direction d'un ministère n'est sous la responsabilité d'aucun ministre, désigne la personne qui en est responsable devant l'Assemblée législative;

«renseignement personnel» désigne toute information concernant l'identité d'une personne, son adresse, sa famille, son état matrimonial, son emploi, un rapport sur les emprunts et remboursements qu'elle a faits, son revenu, ses avoirs et dettes, sa solvabilité, sa formation, son caractère, sa moralité, sa santé, ses particularités physiques ou personnelles ou son mode de vie.

2 Sous réserve de la présente loi, toute personne a le droit de demander et de recevoir toute information concernant les affaires publiques de la province.

3(1) Toute personne peut demander une information en en faisant la demande au ministre dont le ministère est susceptible d'en avoir la garde ou d'en être le dépositaire et le ministre compétent accepte ou rejette cette demande dans les trente jours à compter de sa réception.

3(2) Le demandeur doit préciser dans sa demande les documents contenant l'information sollicitée ou, s'il ne connaît pas le document qui peut la contenir, y indique le sujet de l'information sollicitée avec des détails tels que la date, le lieu et les circonstances, qui permettront à une personne connaissant ce sujet de trouver le document correspondant.

3(3) Lorsqu'il est impossible de déterminer quel document contient l'information sollicitée, le ministre compétent en informe par écrit le demandeur et l'invite à fournir de plus amples renseignements qui pourraient permettre de trouver ce document.

3(4) Tout ministre qui reçoit une demande au sujet d'une information non déposée au ministère pour lequel il a été nommé ni gardée par celui-ci, en avise par écrit le demandeur et lui indique le ministère qui peut en être le dépositaire ou en avoir la garde.

*Right to Information Act*

4(1) Where a request for information is granted by an appropriate Minister or a judge of The Court of Queen's Bench of New Brunswick, the appropriate Minister shall

(a) upon payment of the fee prescribed by regulation, allow the information to be inspected, and, at the discretion of the appropriate minister having regard to cost to be reproduced in whole or in part;

(b) where the information requested is published, refer the applicant to the publication, or

(c) if the information is to be published or is required to be published at a future date, inform the applicant of such fact and the approximate date of such publishing. 1979, c.41, s.111.

4(2) Where a portion of a document contains some information that is information referred to in section 6, and that portion is severable, that portion of the document shall be deleted and the request with respect to the remaining portion of the document shall be granted.

4(3) Where a request for information is granted, the information shall only be provided in the language or languages in which it was made.

4(4) When the document containing the information that is the subject matter of an application has been destroyed or does not exist, the appropriate Minister shall advise the applicant of such fact.

5(1) An appropriate Minister may only deny a request for information or a part thereof in accordance with subsection 4(4) and section 6 and where that Minister denies a request for information he shall, in writing, advise the applicant of the denial stating the reasons for such denial and shall provide the applicant with the necessary forms for a review under this Act.

6 There is no right to information under this Act where its release

4(1) Lorsqu'une demande d'information est acceptée par un ministre compétent ou par un juge de la Cour du Banc de la Reine du Nouveau-Brunswick, le ministre compétent doit

a) permettre, contre paiement d'un droit fixé par règlement, que les documents contenant l'information soient consultés et à sa discrétion, compte tenu des frais, soient reproduits totalement ou partiellement;

b) lorsque l'information sollicitée est publiée, renvoyer le demandeur à la publication, ou

c) si elle va être publiée ou doit être publiée à une date ultérieure, en informer le demandeur et lui indiquer la date approximative de cette publication. 1979, c.41, art.111.

4(2) Lorsqu'une partie d'un document contient des informations correspondant à celles citées à l'article 6, et que cette partie est séparable, elle doit être supprimée et la demande concernant la partie restante du document doit être acceptée.

4(3) Une information n'est communiquée, lorsqu'une demande à son sujet est acceptée, que dans la langue ou les langues dans lesquelles elle a été émise.

4(4) Lorsque le document contenant l'information faisant l'objet d'une demande a été détruit ou n'existe pas, le ministre compétent en avise le demandeur.

5(1) Le ministre compétent ne peut rejeter totalement ou partiellement une demande d'information qu'en vertu du paragraphe 4(4) et de l'article 6, et lorsqu'il rejette une telle demande, il en avise par écrit le demandeur, lui indique les raisons de ce refus et lui fournit les formules nécessaires pour exercer un recours en vertu de la présente loi.

6 Le droit à l'information conféré par la présente loi est suspendu lorsque la communication d'informations



*Loi sur le droit à l'information*

(a) would disclose information the confidentiality of which is protected by law;

(b) would reveal personal information, given on a confidential basis, concerning another person;

(c) would cause financial loss or gain to a person or department, or would jeopardize negotiations leading to an agreement or contract;

(d) would violate the confidentiality of information obtained from another government;

(e) would be detrimental to the proper custody, control or supervision of persons under sentence;

(f) would disclose legal opinions or advice provided to a person or department by a law officer of the Crown, or privileged communications as between solicitor and client in a matter of department business;

(g) would disclose opinions or recommendations by public servants for a Minister or the Executive Council;

(h) would disclose the substance of proposed legislation or regulations;

(i) would impede an investigation, inquiry or the administration of justice.

7(1) Where an applicant is not satisfied with the decision of an appropriate Minister or where an appropriate Minister fails to reply to a request within the time prescribed, the applicant may in the prescribed form and manner either

(a) refer the matter to a judge of The Court of Queen's Bench of New Brunswick, or

(b) refer the matter to the Ombudsman. Am.(a), 1979, c.41, s.111.

a) pourrait entraîner la divulgation d'information dont le caractère confidentiel est garanti par la loi;

b) pourrait dévoiler des renseignements personnels concernant une autre personne et donnés à titre confidentiel;

c) pourrait occasionner des gains ou des pertes financières pour une personne ou un ministère, ou pourrait compromettre des négociations en vue d'aboutir à la conclusion d'un accord ou d'un contrat;

d) pourrait porter atteinte au caractère confidentiel d'une information reçue d'un autre gouvernement;

e) pourrait être préjudiciable à la détention ou à la surveillance d'une personne condamnée;

f) pourrait entraîner la divulgation de consultations juridiques données à une personne ou à un ministère par un légiste de la Couronne, ou violer le secret professionnel, qui existe entre l'avocat et son client, à propos d'une affaire d'ordre ministériel;

g) pourrait entraîner la divulgation d'avis ou de recommandations faites par un fonctionnaire à un ministre ou au Conseil exécutif;

h) pourrait entraîner la divulgation du contenu d'un projet de loi ou de règlement;

i) pourrait entraver le cours d'une enquête ou d'une recherche, ou l'exercice de la justice.

7(1) Tout demandeur non satisfait de la décision d'un ministre compétent, ou si ce dernier omet de répondre à une demande dans le délai prescrit, peut, dans les formes prescrites,

a) soit soumettre l'affaire à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick, ou

b) soit la soumettre à l'Ombudsman. Mod.a), 1979, c.41, art.111.

*Right to Information Act*

7(2) Where the applicant refers the matter to a judge of The Court of Queen's Bench of New Brunswick under subsection (1),

(a) the applicant may not thereafter refer the matter to the Ombudsman under paragraph (1)(b) or under the *ombudsman Act*, and

(b) the Ombudsman, in such case, may not act under the authority of this Act or the *Ombudsman Act* with respect to that matter. 1979, c.41, s.111.

7(3) Where the applicant refers the matter to the Ombudsman under subsection (1), the applicant may not, subject to subsection 11(1), refer the matter to a judge of The Court of Queen's Bench of New Brunswick. 1979, c.41, s.111.

7(4) The Ombudsman, subject to section 19 of the *Ombudsman Act*, and The Court of Queen's Bench of New Brunswick judge may, with respect to any matter referred to them, inspect the information that is the subject matter of the referral, if such information exists, in order to determine the referral, but such inspection shall be made *in camera* without the presence of any person. 1979, c.41, s.111.

8(1) The Court of Queen's Bench of New Brunswick judge shall upon the applicant's request hold a hearing, and

(a) in the case where a minister denied the request for information or a part thereof, may order the minister to grant the request in whole or in part;

(b) in the case where the minister failed to reply to a request, shall order that the appropriate Minister,

(i) grant the request, or

(ii) deny the request;

(c) may make any other order that is appropriate. 1979, c.41, s.111.

8(2) A copy of the decision of The Court of Queen's Bench of New Brunswick judge shall be sent to the applicant and the appropriate Minister. 1979, c.41, s.111.

7(2) Lorsque le demandeur soumet l'affaire à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick en vertu du paragraphe (1),

a) il ne peut, par la suite, la soumettre à l'Ombudsman en vertu de l'alinéa (1)b) ou en vertu de la *Loi sur l'Ombudsman*, et

b) ce dernier, dans ce cas, ne peut intervenir sous le régime de la présente loi ou de la *Loi sur l'Ombudsman* au sujet de cette affaire. 1979, c.41, art.111.

7(3) Le demandeur qui soumet l'affaire à l'Ombudsman en vertu du paragraphe (1), ne peut, sous réserve du paragraphe 11(1), la soumettre à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick. 1979, c.41, art.111.

7(4) L'Ombudsman, sous réserve de l'article 19 de la *Loi sur l'Ombudsman*, et le juge de la Cour du Banc de la Reine du Nouveau-Brunswick peuvent, au sujet de toute affaire qui leur est soumise, consulter les documents contenant l'information, objet du recours, si celle-ci existe, afin de délimiter le recours, mais cette consultation doit se faire à huis clos sans qu'aucune personne ne soit présente. 1979, c.41, art.111.

8(1) Le juge de la Cour du Banc de la Reine du Nouveau-Brunswick doit, sur la demande du demandeur, convoquer une audience, et

a) dans le cas où un ministre a rejeté totalement ou partiellement la demande d'information, peut lui ordonner de l'accepter totalement ou partiellement;

b) dans le cas où le ministre a omis de répondre à une demande, doit ordonner au ministre compétent

(i) d'accepter la demande, ou

(ii) de rejeter celle-ci;

c) peut rendre tout autre ordonnance qui est nécessaire. 1979, c.41, art.111.

8(2) Une copie de la décision du juge de la Cour du Banc de la Reine du Nouveau-Brunswick est adressée au demandeur et au ministre compétent. 1979, c.41, art.111.

*Loi sur le droit à l'information*

8(3) No appeal lies from the decision of The Court of Queen's Bench of New Brunswick judge under subsection (1). 1979, c.41, s.111.

9 The Ombudsman shall in accordance with this Act and the power, authority, privileges, rights and duties vested in him under the *Ombudsman Act* review the matter referred to him within thirty days of having received the referral.

10(1) Upon having reviewed the matter referred to him, the Ombudsman shall forthwith, in writing, advise the appropriate Minister of his recommendation and shall forward a copy of such recommendation to the person making the referral.

10(2) The Ombudsman may in such recommendation

(a) recommend to the appropriate Minister to grant the request in whole or in part;

(b) in the case where the appropriate Minister failed to reply to a request, recommend to the appropriate Minister

(i) to grant the request, or

(ii) to deny the request.

10(3) The appropriate Minister referred to in subsection (2) shall, upon reviewing the recommendation of the Ombudsman, carry out the recommendations of the Ombudsman or make such other decision as he thinks fit and upon making his decision, that Minister shall notify, in writing, the person making the referral and shall forward to the Ombudsman a copy of such decision.

11(1) Where the person making the referral is not satisfied with the decision of the appropriate Minister under subsection 10(3), that person may appeal the matter to a judge of The Court of Queen's Bench of New Brunswick. 1979, c.41, s.111.

8(3) La décision prise par un juge de la Cour du Banc de la Reine du Nouveau-Brunswick en vertu du paragraphe (1) est sans appel. 1979, c.41, art.111.

9 L'Ombudsman, conformément à la présente loi et aux pouvoirs, attributions, prérogatives, droits et devoirs que lui a conférés la *Loi sur l'Ombudsman*, examine l'affaire qui lui a été soumise dans les trente jours de la réception de la demande de recours.

10(1) Après avoir examiné l'affaire qui lui a été soumise, l'Ombudsman doit aussitôt faire connaître, par écrit, sa recommandation au ministre compétent et en envoyer une copie à l'auteur du recours.

10(2) L'Ombudsman peut par cette recommandation

a) recommander au ministre compétent d'accepter totalement ou partiellement une demande;

b) dans le cas où le ministre compétent a omis de répondre à une demande, recommander au ministre compétent

(i) d'accepter la demande, ou

(ii) de la rejeter.

10(3) Le ministre compétent visé au paragraphe (2) doit, après examen de la recommandation de l'Ombudsman, la mettre à exécution ou prendre toute autre décision qu'il juge convenable et, après avoir pris sa décision, il la notifie, par écrit, à l'auteur du recours et en envoie une copie à l'Ombudsman.

11(1) Tout auteur d'un recours, qui n'est pas satisfait de la décision que le ministre compétent a prise en vertu du paragraphe 10(3), peut en appeler à un juge de la Cour du Banc de la Reine du Nouveau-Brunswick. 1979, c.41, art.111.



*Right to Information Act*

11(2) Subsection 7(4) and section 8 apply *mutatis mutandis* to an appeal made under subsection (1).

12 In any proceeding under this Act, the onus shall be on the Minister to show that there is no right to the information that is the subject of the proceeding.

13 Where a matter is referred or appealed to a judge of The Court of Queen's Bench of New Brunswick, the judge shall award costs in favour of the applicant

(a) where the applicant is successful, or

(b) where the applicant is not successful, if the judge considers it to be in the public interest. 1979, c.41, s.111.

14 The Lieutenant-Governor in Council may make regulations

(a) prescribing the form and manner of referrals under this Act;

(b) prescribing forms;

(c) prescribing the departments for the purposes of this Act;

(d) prescribing fees for the purposes of this Act;

(e) prescribing such other procedures as may be necessary to carry out the intent and purposes of this Act.

15 This Act is subject to review by the Legislative Assembly after thirty months following the coming into force of this Act.

N.B. This Act comes into force on January 1, 1980.

11(2) Le paragraphe 7(4) et l'article 8 s'appliquent *mutatis mutandis* à un appel interjeté en vertu du paragraphe (1).

12 Dans toute procédure en vertu de la présente loi, il appartient au Ministre d'établir que le droit à l'information est suspendu.

13 À la suite d'un recours ou d'un appel devant un juge de la Cour du Banc de la Reine du Nouveau-Brunswick, ce dernier doit statuer sur les frais en faveur du demandeur qui

a) a gain de cause;

b) n'a pas gain de cause lorsque, de l'avis du juge, il y va de l'intérêt public. 1979, c.41, art.111.

14 Le lieutenant-gouverneur en conseil peut, par voie de règlements,

a) prescrire les modalités de l'exercice du recours prévu par la présente loi;

b) établir des formules;

c) énoncer les ministères concernés par l'application de la présente loi;

d) fixer les droits payables en vertu de la présente loi.

e) établir toutes les autres procédures qui peuvent être nécessaires à l'application de l'objet de la présente loi.

15 L'Assemblée législative pourra réexaminer la présente loi trente mois après son entrée en vigueur.

N.B. La présente loi entre en vigueur le 1<sup>er</sup> janvier 1980.



LANGUAGE RIGHTS



DROITS LINGUISTIQUES





## LANGUAGE RIGHTS

### Introduction

With one third of its population speaking French, New Brunswick has a statute recognizing English and French as the official languages of the province. This statute, entitled: Official Languages of New Brunswick Act and reproduced below, was assented to April 18, 1969, but it was not until July 1, 1977, that all its provisions came into force. In addition to the federal legislation mentioned in volume 2 of this collection (Chapter I), this statute confirms, with some limitations, the bilingual character of New Brunswick, especially concerning the proceedings and records of the Legislative Assembly, the publication of statutes and official documents, the provincial administration, the administration of justice and finally the instruction in public schools. This statute is furthermore supplemented by various regulations listed under the title of this act, in the index of the last annual volume of New Brunswick Regulations, and in the Royal Gazette, Part II.

### Selected references:

Kerr, Robert W., "The Official Languages of New Brunswick Act," (1970), 20 University of Toronto Law Journal 478-485.

Dufour, André, La législation fédérale en matière linguistique, la réglementation municipale en matière linguistique au Québec, la législation récente en matière linguistique dans les provinces d'Ontario, du Manitoba et du Nouveau-Brunswick. Québec, Editeur officiel du Québec, 1973, 76 p. (Québec (Province). Commission d'enquête sur la situation de la langue française et sur les droits linguistiques au Québec. Étude, E2)

DROITS LINGUISTIQUESINTRODUCTION

Considérant que le tiers de la population du Nouveau-Brunswick est francophone, le législateur provincial a adopté une loi reconnaissant l'anglais et le français comme langues officielles de cette province. Cette loi, intitulée Loi sur les langues officielles du Nouveau-Brunswick et reproduite ci-après, a été sanctionnée le 18 avril 1969. Ses dispositions ne sont cependant entrées en vigueur que le 1er juin 1977. Outre la législation fédérale signalée au chapitre 1 du volume 2 de la présente collection, cette loi vient consacrer, sous certaines restrictions, le caractère bilingue du Nouveau-Brunswick, dans les domaines suivants: la conduite et la rédaction des délibérations de l'Assemblée législative, la publication des lois et des documents officiels de l'administration provinciale, l'administration de la justice et, enfin, l'enseignement dans les écoles publiques. Cette loi est d'ailleurs complétée par divers règlements mentionnés dans la table des matières du dernier volume annuel des Règlements du Nouveau-Brunswick et dans l'index de la Gazette royale, Partie II.

Sources choisies

Kerr, Robert W., "The Official Languages of New Brunswick Act", (1970) 20 University of Toronto Law Journal, pp. 478-485.

Dufour, André, La législation fédérale en matière linguistique; la réglementation municipale en matière linguistique au Québec; la législation récente en matière linguistique dans les provinces d'Ontario, du Manitoba et du Nouveau-Brunswick, Québec, Éditeur officiel du Québec, 1973, 76 p. (Québec (Province), Commission d'enquête sur la situation de la langue française et sur les droits linguistiques au Québec, Etude E2).



## Official Languages of New Brunswick Act

R.S.N.B. 1973, c. O-1

with amendments to date, including 1975, c. 42

## Loi sur les langues officielles du Nouveau-Brunswick

L.R.N.-B. 1973, c. O-1

et ses modifications à jour, y inclus 1975, c. 42

### 1 In this Act

“court” includes judicial, quasi-judicial and administrative tribunals;

“official languages” means those languages so established under section 2. 1969, c.14, s.2.

### 2 Subject to this Act, the English and French languages

(a) are the official languages of New Brunswick for all purposes to which the authority of the Legislature of New Brunswick extends, and

(b) possess and enjoy equality of status and equal rights and privileges as to their use for such purposes. 1969, c.14, s.3.

### 3 The official languages may be used in any proceeding of the Legislative Assembly or committee thereof. 1969, c.14, s.4.

### 4 Records and reports of any proceeding of the Legislative Assembly or committee thereof are to be printed in the official languages. 1969, c.14, s.5.

### 5(1) Bills introduced into the Legislative Assembly are to be printed in the official languages.

### 5(2) Motions or other documents introduced into the Legislative Assembly or committee thereof may be printed in either or both official languages. 1969, c.14, s.6.

### 1 Dans la présente loi

«langues officielles» désigne les langues reconnues comme telles à l'article 2;

«tribunal» s'entend d'un tribunal judiciaire, quasi-judiciaire et administratif. 1969, c.14, art.2.

### 2 Sous toutes réserves prévues par la présente loi, l'anglais et le français

a) sont les langues officielles du Nouveau-Brunswick pour toutes les fins relevant de la compétence de la Législature du Nouveau-Brunswick, et

b) bénéficient d'un statut équivalent de droit et de privilège, lorsqu'ils sont employés aux fins visées à l'alinéa a). 1969, c.14, art.3.

### 3 Les langues officielles peuvent être utilisées à toutes séances de l'Assemblée législative ou de l'un de ses comités. 1969, c.14, art.4.

### 4 Les procès-verbaux et rapports de toutes séances de l'Assemblée législative ou de l'un de ses comités doivent être imprimés dans les langues officielles. 1969, c.14, art.5.

### 5(1) Les projets de loi présentés à l'Assemblée législative doivent être imprimés dans les langues officielles.

### 5(2) Les motions ou autres documents présentés à l'Assemblée législative ou à l'un de ses comités peuvent être imprimés dans l'une ou l'autre des langues officielles ou dans les deux. 1969, c.14, art.6.

*Loi sur les langues officielles du Nouveau-Brunswick*

5(3) Subsection (1) does not apply where the bill is to amend a statute printed in only one of the official languages. 1969, c.14, s.6; 1975, c.42, s.1.

6 The next and succeeding revisions of the Statutes of New Brunswick are to be printed in the official languages. 1969, c.14, s.7.

7(1) Subject to subsection (2), statutes passed subsequent to the proclamation of this section are to be printed in the official languages.

7(2) Subsection (1) does not apply where the statute is an amendment to a statute printed in only one of the official languages. 1969, c.14, s.8.

8 Subject to section 15, notices, documents, instruments or writings required under this or any Act to be published by the Province, any agency thereof or any Crown corporation are to be printed in the official languages. 1969, c.14, s.9.

9 Subject to section 15, copies of Official and other notices, advertisements and documents appearing in *The Royal Gazette* are to be printed in the official languages. 1969, c.14, s.10.

10 Subject to section 15, where requested to do so by any person, every public officer or employee of the Province, any agency thereof or any Crown corporation shall provide or make provision for such person

(a) to obtain the available services for which such public officer or employee is responsible, and

(b) to communicate regarding those services,

in either official language requested. 1969, c.14, s.11.

11 The council of any municipality may declare by resolution that either or both official language may be used with regard to any matter or in any proceeding of such council. 1969, c.14, s.12.

5(3) Le paragraphe (1) ne s'applique pas lorsque le projet de loi tend à modifier une loi imprimée dans une seule des langues officielles. 1969, c.14, art.6; 1975, c.42, art.1.

6 Le prochain recueil des lois révisées du Nouveau-Brunswick et ceux qui suivront devront être imprimés dans les langues officielles. 1969, c.14, art.7.

7(1) Sous réserve du paragraphe (2), les lois adoptées à la suite de l'entrée en vigueur du présent article doivent être imprimées dans les langues officielles.

7(2) Le paragraphe (1) ne s'applique pas à la loi qui en modifie une autre imprimée dans une seule des langues officielles. 1969, c.14, art.8.

8 Sous réserve de l'article 15, les avis, pièces, documents officiels ou écrits, dont la présente loi ou toute autre loi exige la publication par la province, l'un de ses organismes ou une société d'État, doivent être imprimés dans les langues officielles. 1969, c.14, art.9.

9 Sous réserve de l'article 15, les avis, annonces et pièces de caractère officiel ou non paraissant dans la *Gazette royale* doivent être imprimés dans les langues officielles. 1969, c.14, art.10.

10 Sous réserve de l'article 15, lorsque quelqu'un lui en fait la demande, tout fonctionnaire ou employé public de la province, de l'un de ses organismes ou d'une société d'État doit veiller à ce que cette personne puisse

a) obtenir les services disponibles dont ce fonctionnaire ou employé public a la responsabilité, et

b) communiquer au sujet de ces services,

dans l'une ou l'autre des langues officielles qui est demandée. 1969, c.14, art.11.

11 Tout conseil municipal peut déclarer par résolution que l'une ou l'autre des langues officielles ou les deux peuvent être utilisées dans toute délibération ou à toute réunion de ce conseil. 1969, c.14, art.12.

*Official Languages of New Brunswick Act*

**12 In any public, trade or technical school**

(a) where the mother tongue of the pupils is English, the chief language of instruction is to be English and the second language is to be French;

(b) where the mother tongue of the pupils is French, the chief language of instruction is to be French and the second language is to be English;

(c) subject to paragraph (d), where the mother tongue of the pupils is in some cases English and in some cases French, classes are to be so arranged that the chief language of instruction is the mother tongue of each group with the other official language the second language for those groups; and

(d) where the Minister of Education decides that it is not feasible by reason of numbers to abide by the terms of paragraph (c), he may make alternative arrangements to carry out the spirit of this Act. 1969, c.14, s.13.

**13(1)** Subject to section 15, in any proceeding before a court, any person appearing or giving evidence may be heard in the official language of his choice and such choice is not to place that person at any disadvantage.

**13(2)** Subject to subsection (1), where

(a) requested by any party, and

(b) the court agrees that the proceedings can effectively be thus conducted,

the court may order that the proceedings be conducted totally or partially in one of the official languages. 1969, c.14, s.14.

**14** In construing any of the instruments, bills, statutes, writings, records, reports, motions, notices, advertisements, documents or other writings mentioned in this Act, both versions in the official languages are equally authentic. 1969, c.14, s.15.

**15(1)** Where

(a) warranted by reason of the number of persons involved,

**12** Dans chacune des écoles publiques, écoles de métiers ou écoles techniques,

a) lorsque l'anglais est la langue maternelle des élèves, l'anglais doit être la principale langue d'enseignement et le français doit être la langue seconde;

b) lorsque le français est la langue maternelle des élèves, le français doit être la principale langue d'enseignement et l'anglais doit être la langue seconde;

c) sous réserve de l'alinéa d), lorsque la langue maternelle d'une partie des élèves est l'anglais et celle de l'autre partie est le français, les classes doivent être organisées de sorte que la langue maternelle de chaque groupe soit la principale langue d'enseignement et que l'autre langue officielle soit la langue seconde; et

d) lorsque le ministre de l'Éducation décide que le nombre rend impraticable l'application des dispositions de l'alinéa c), il peut prendre d'autres mesures en vue de répondre à l'esprit de la présente loi. 1969, c.14, art.13.

**13(1)** Sous réserve de l'article 15, dans toute procédure devant un tribunal, toute personne qui comparaît ou témoigne peut être entendue dans la langue officielle de son choix et ne doit être, en fait, nullement défavorisée en raison de ce choix.

**13(2)** Sous réserve du paragraphe (1),

a) lorsqu'une partie le demande, et

b) que le tribunal convient qu'on peut efficacement procéder ainsi,

le tribunal peut ordonner que les séances se tiennent uniquement ou partiellement dans l'une des langues officielles. 1969, c.14, art.14.

**14** Dans l'interprétation des documents officiels, projets de loi, lois, écrits, procès-verbaux, rapports, motions, avis, annonces, pièces ou autres écrits dont fait mention la présente loi, les deux versions des langues officielles font pareillement autorité. 1969, c.14, art.15.

**15(1)** Le lieutenant-gouverneur en conseil peut,

a) si le nombre de personnes en cause le justifie,



*Loi sur les langues officielles du Nouveau-Brunswick*

(b) the spirit of this Act so requires, or

b) si l'esprit de la présente loi l'exige, ou

(c) it is deemed necessary to so provide for the orderly implementation of this Act,

c) s'il est jugé nécessaire de le faire pour assurer la bonne application de la présente loi,

the Lieutenant-Governor in Council may make regulations determining the application of sections 8, 9 and 10. 1975, c.42, s.2.

édicter des règlements précisant l'application des articles 8, 9 et 10. 1975, c.42, art.2.

15(2) The Lieutenant-Governor in Council may make regulations governing the procedure in proceedings before any court, including regulations respecting the giving of notice as he deems necessary to enable the court to exercise or carry out any power or duty conferred or imposed upon it by section 13. 1969, c.14, s.16; 1975, c.42, s.2.

15(2) Le lieutenant-gouverneur en conseil peut établir des règlements régissant les procédures engagées devant tout tribunal, y compris les règlements relatifs aux notifications qu'il estime nécessaires pour permettre au tribunal d'exercer toute fonction ou pouvoir qui lui est conféré ou imposé par l'article 13. 1969, c.14, art.16; 1975, c.42, art.2.

NATIVE RIGHTS



DROITS DES AUTOCHTONES

## NATIVE RIGHTS

### Note:

New Brunswick has 15 Indian bands with a total registered band membership of 5,060 (1976 census), 23 reserves with a total acreage of 42,743, and one settlement (1975 data).

To date, this province has not enacted any statute dealing with native rights, and the only legislation applicable to this matter is the federal legislation reproduced or mentioned in volume 2 of this collection, Chapter J.

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## DROITS DES AUTOCHTONES

### Note:

Au Nouveau-Brunswick, on dénombre 15 bandes indiennes dont la population inscrite atteint 5,060 habitants (recensement 1976), 23 réserves d'une superficie globale de 42,743 âcres en 1975 et 1 établissement.

Jusqu'à présent, cette province n'a pas légiféré sur les droits des autochtones, de sorte que la seule législation applicable en cette matière se limite aux lois fédérales reproduites ou signalées au chapitre J du volume 2 de cette collection.



EMERGENCY MEASURES



MESURES D' URGENCE

## EMERGENCY MEASURES

### Note:

New Brunswick does not have provincial legislation comparable with the federal War Measures Act, reproduced in volume 2 of this collection, Chapter L. The province is subject to this federal statute, and has passed its own Emergency Measures Act (A.N.B. 1978, c. E-7.1; R.S.N.B. 1973, c. E-7.1, as amended), not reproduced here. This statute authorizes the Minister of Municipal Affairs to declare a state of emergency in respect to all or any area of the province in order to ensure the safety, health or welfare of the civil population and the protection of property. A municipality can declare a state of local emergency in all or any area of its territory.

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## MESURES D'URGENCE

### Note:

Le Nouveau-Brunswick ne dispose d'aucune loi de portée comparable à celle de la Loi sur les mesures de guerre adoptée par le Parlement canadien et reproduite au chapitre L du volume 2 de cette collection. Bien que soumise à cette dernière loi, cette province a quand même adopté la Loi sur les mesures d'urgence (L.R.N.-B. 1973, c. E-7.1 et ses modifications), non reproduite ici. Celle-ci permet au Ministre des affaires municipales de proclamer l'état d'urgence dans l'ensemble ou une partie de la province en vue de protéger la sécurité, la santé, le bien-être et les biens de la population civile. Une municipalité peut, aux mêmes fins, déclarer l'état d'urgence dans tout ou partie de son territoire.

MISCELLANEOUS



DIVERS





## COAT OF ARMS, FLAG AND EMBLEM

### Introduction

The coat of arms of New Brunswick was granted by royal warrant of Queen Victoria, dated May 26, 1868. It is formed by the gold lion at the top, and an ancient galley below. The gold lion on a red ground is inspired by the lions in the arms of the duchy of Brunswick which was ruling England when the province was established. The ancient galley on waves symbolizes the early ship building industry, and traces its origin to the great seal of New Brunswick of 1785. The crest of a royal crown above the shield, and the motto: Spem reduxit, which means 'Hope was restored', were added by order in council in 1966. The official flag of New Brunswick displays the arms of the province, and was adopted by proclamation of the Lieutenant Governor dated February 24, 1965, reproduced below.

### Selected references:

Swan, Conrad, Canada: Symbols of Sovereignty, Toronto, University of Toronto Press, 1977, pp. 149-157.

Canada, Dept. of the Secretary of State, The Arms, Flags, and Emblems of Canada, Ottawa, 1978, pp. [31-34].

## ARMOIRIES, DRAPEAU ET EMBLÈMES

### Introduction

Les armoiries du Nouveau-Brunswick ont été accordées par décret de la reine Victoria en date du 26 mai 1868. Elles se composent, dans la partie supérieure de l'écu, d'un léopard d'or sur fond rouge, symbole de la maison de Brunswick qui régnait sur l'Angleterre au moment où la province a été créée. Apparaît ensuite, sur fond or, une galère antique avec ses rames voguant sur une mer au naturel; cette galère symbolise la construction navale, la principale industrie de la province dans les premières années. Le cimier, soit une couronne royale, et le listel sous l'écu, portant la devise Spem Reduxit qui signifie "L'espoir renaît", ont été ajoutés en 1966 par décret du lieutenant-gouverneur en conseil. Les armoiries sont déployées sur le drapeau officiel de la province adopté le 24 février 1965 par proclamation du lieutenant-gouverneur, reproduite ci-après.

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ARMS / ARMOIRIES



## FLAG / DRAPEAU

## PROCLAMATION

(1965), 123 Royal Gazette 96 (March 10)

WHEREAS Her Majesty of happy memory Queen Victoria did for the greater honour and distinction of the Province of New Brunswick assign thereto by Royal Warrant dated the twenty-sixth day of May, 1868 certain Armorial Bearings.

AND WHEREAS, the blazon reads as follows:

Or, on waves a lymphad or ancient galley, with oars in action proper on a chief gules a lion passant guardant or

AND WHEREAS the said Armorial Bearings are to be borne for the Province of New Brunswick on Seals, Shields, Banners, Flags or otherwise according to the Laws of Arms.

NOW THEREFORE, the Lieutenant-Governor by and with the advice of the Executive Council by this Proclamation appoints and declares as the Provincial Flag of New Brunswick, upon, from and after the twenty-fourth day of February, in the year of Our Lord, One Thousand Nine Hundred and Sixty-five, a Flag in the rectangular shape of the proportions

four by length and two and one-half by width with the Chief and charge thereon occupying the one-third part and the remainder of the Armorial Bearings occupying the lower two-thirds part of the space, to be flown and used on the express permission of His Honour the Lieutenant-Governor of the Province of New Brunswick on the advice of the Provincial Secretary.

GIVEN under my hand and the Great Seal of the Province of New Brunswick, at Fredericton the twenty-fourth day of February in the year of Our Lord One Thousand Nine Hundred Sixty-Five.



BY COMMAND OF THE  
LIEUTENANT-GOVERNOR

J. L. O'BRIEN  
Lieutenant-Governor

DONALD C. HARPER  
Provincial Secretary



NEWFOUNDLAND

# CONSTITUTIONS OF CANADA

Federal and Provincial

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# LES CONSTITUTIONS DU CANADA

Fédérale et Provinciales

Edited and Annotated by  
CHRISTIAN L. WIKTOR  
&  
GUY TANGUAY

PROVINCES

*Issued May 1982*

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# NEWFOUNDLAND

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## INTRODUCTION



## INTRODUCTION





## NEWFOUNDLAND

### Introduction

While it is claimed that Newfoundland was visited by the Norsemen at the turn of the 10th and 11th centuries, exploration of Newfoundland started with the voyages of John Cabot in 1497, Gaspar Corte Real in 1500, Jacques Cartier in 1534-41, and others. Its colonization followed later with the formal annexation of Newfoundland to England by Sir Humphrey Gilbert in 1583. Newfoundland thus became the first possession of England in North America and her oldest colony overseas. Various settlements were slowly established, the first one in 1610 at Cupids in Conception Bay. In 1637 the separate colonies established by royal charter merged into one, and were granted to Sir David Kirk by letters patent of King Charles I dated November 13, 1637. After a long period of struggle for supremacy in North America France recognized English sovereignty over Newfoundland by the Treaty of Utrecht of 1713, although retaining valuable fishing privileges until 1904.

The origin of the name Newfoundland goes back to the early 16th century when it was used by European fishermen to mean the coasts beyond the Atlantic. John Cabot called it Terra de Bacalao, or land of cod fish. Labrador derives its name apparently from the Portuguese: Terra de Laborador or land of labour. The colony of Newfoundland claimed for a long time jurisdiction over part of the Labrador Peninsula, actually since 1809 when the eastern part of Labrador was attached to Newfoundland. Its boundary was finally defined in 1927 by a decision of the Judicial Committee of the imperial Privy Council in favour of Newfoundland, confirmed in the Terms of Union with Canada of 1949. The text of this decision is printed in volume 1 of this collection, pp. C207, and subs.

Representative government was granted in this Crown colony in 1832 in the form of a bicameral legislature, that is an elected Assembly, and a nominated Legislative Council of officials. These two legislative bodies were amalgamated for seven years from 1841, but the old constitution was restored in 1848. Responsible government was introduced in Newfoundland in 1855, with the creation of a new body, an Executive Council appointed by the Governor, in addition to the existing elected House of Assembly and a nominated Legislative Council. This constitution functioned with little change until 1934. Newfoundland attained dominion status in

1926, but did not adopt the Statute of Westminster of 1931. In 1934, the self-government in existence since 1855 was suspended because of a financial crisis. Newfoundland reverted to the status of a British colony, until 1949. During that period of fifteen years the existing constitution was suspended and Newfoundland was ruled by a Governor and a Commission of Government of six members, appointed by the imperial government in London, and supervised by the Dominions Office. It exercised both legislative and executive functions, enacting laws by majority vote. See Newfoundland Act, 1933, 24 Geo. 5, c. 2 (U.K.).

Canada and Newfoundland had negotiated Confederation twice before 1949, in 1869 and 1895, but in 1949 the negotiations proved successful. After a second referendum held on July 22, 1948, resulting in a small majority (52.3%) for Confederation, Newfoundland joined Canada as the tenth province, effective March 31, 1949, and its constitution in existence prior to 1934 was revived. The act of union, called Terms of Union, was negotiated between Newfoundland and Canada in the form of a Memorandum of Agreement signed December 11, 1948, and confirmed by a federal statute of Canada (S.C. 1949, c. 1), and by an imperial statute, the British North America Act, 1949 (12-13 Geo. 6, c. 22 (U.K.)). The text of this formal constitutional document of Newfoundland is reprinted in volume 1 of this collection, pp. B85, and subs.

The island of Newfoundland, adjacent islands, and Labrador have a total area of 156,185 square miles (404,517 km<sup>2</sup>). Its only land boundary is with Quebec in the Labrador Peninsula. The province of Newfoundland and Labrador has 557,725 inhabitants (1976 census), of which only one half percent are of French origin. Its capital is St. John's with a population of 86,576 (1976 census). Since 1949 the province has been represented in the federal Parliament by 6 Senators appointed to the Senate, and by 6 members elected to the House of Commons. Its provincial House of Assembly has 52 elected Members.

Subjects treated under this province follow the arrangement in the federal volumes 1 and 2, and are listed in the table of contents above. should be mentioned that Newfoundland does not have legislation dealing with language rights. For more information consult selected references listed below.



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## TERRE-NEUVE

Introduction

Bien que Terre-Neuve ait pu recevoir la visite de Norvégiens au tournant des 10<sup>e</sup> et 11<sup>e</sup> siècles, son exploration ne commença véritablement que lors des voyages de Jean Cabot en 1497, de Gaspar Corte Real en 1500, de Jacques Cartier entre 1534 et 1541 et d'autres explorateurs subséquemment. Le début de sa colonisation fut marqué par son annexion officielle à l'Angleterre réalisée par sir Humphrey Gilbert en 1583. Terre-Neuve devint ainsi la première possession britannique en Amérique du Nord et la plus ancienne colonie anglaise d'outre-mer. Divers établissements y furent érigés progressivement, dont le premier en 1610 à Cupids dans la baie de la Conception. En 1637, ces diverses colonies, établies en vertu d'une charte royale, furent réunies en une seule et concédées à sir David Kirk par lettres patentes du roi Charles I en date du 13 novembre. A la suite d'une longue lutte pour l'obtention de la suprématie en Amérique du Nord, la France reconnut la souveraineté de l'Angleterre sur Terre-Neuve par le traité d'Utrecht de 1713, tout en se faisant octroyer d'importants droits de pêche qu'elle conserva jusqu'en 1904.

L'utilisation du nom Terre-Neuve remonte au début du 16<sup>e</sup> siècle, alors que les pêcheurs européens l'employaient pour désigner les côtes au-delà de l'Atlantique. Jean Cabot l'appelait Terra de Bacalao, c'est-à-dire pays de la morue. Par ailleurs, le Labrador tient apparemment son nom du portugais Terra de Laborador ou pays du travail. Longtemps, la colonie de Terre-Neuve revendiqua sa juridiction sur la partie orientale de la péninsule du Labrador qui lui avait été rétrocédée en 1809. La frontière du Labrador fut finalement délimitée en 1927 par décision du comité judiciaire du Conseil privé favorable à Terre-Neuve et entérinée par les Conditions de l'Union de Terre-Neuve au Canada de 1949. Le texte de cette décision est reproduit aux pages C207 et suivantes du volume 1 de cette collection.

L'introduction du gouvernement représentatif dans cette colonie de la Couronne remonte à 1832. Il comprenait alors une assemblée élue et un conseil législatif de fonctionnaires nommés. Il y eut fusion de ces deux chambres législatives de 1841 à 1848, date à laquelle fut rétablie l'ancienne constitution. Par ailleurs, le gouvernement responsable fut



instauré en 1855. Outre l'Assemblée législative élue et le conseil législatif nommé, ce gouvernement comprenait également un conseil exécutif nouvellement créé dont les membres étaient désignés par le gouverneur. Ce régime constitutionnel subsista jusqu'en 1934 sans subir de modification importante. Incidemment, Terre-Neuve obtint son statut de dominion en 1926, mais n'adopta pas le Statut de Westminster de 1931. En 1934, le régime de gouvernement autonome en vigueur depuis 1855 fut suspendu en raison d'une crise économique. Terre-Neuve recouvra alors son statut de colonie britannique jusqu'en 1949. Pendant ces quinze années, elle fut administrée par un gouverneur et une commission gouvernementale de six membres désignés par le gouvernement impérial de Londres, sous la surveillance du Bureau des dominions. Conformément au Newfoundland Act, 1933 24 Geo. 5, c. 2(R.-U.), cette administration exerçait les pouvoirs législatif et exécutif, les lois étant adoptées à la majorité des voix.

Des pourparlers en vue de faire admettre Terre-Neuve dans la Confédération furent entrepris en 1869 et 1895. Ce n'est qu'en 1949, le 31 mars effectivement, que Terre-Neuve joignit le Canada comme dixième province par suite du désir exprimé par la population terre-neuvienne, à une faible majorité des voix favorables (52.3%), lors d'un second référendum sur cette question tenu le 22 juillet 1948. La constitution de cette nouvelle province, telle qu'elle existait avant 1934, fut alors remise en vigueur sous certaines réserves. L'union de Terre-Neuve au Canada fut négociée sous forme d'un accord intitulé Conditions de l'union conclu le 11 décembre 1948 et ratifié par une loi fédérale canadienne (S.C. 1949, c. 1) et une loi impériale connue sous le nom de l'Acte de l'Amérique du Nord britannique, 1949, 12-13 Geo. VI, c. 22 (R.-U.). Le texte de ce dernier document est reproduit aux pages B87 et suivantes du volume 1 de la présente collection.

L'île de Terre-Neuve, les îles adjacentes et le Labrador ont une superficie totale de 156,185 milles carrés (404,517 kilomètres carrés). Entourée par l'océan Atlantique, cette province a aussi une frontière commune avec le Québec dans la péninsule du Labrador. Sa population, y compris celle du Labrador, atteint 557,725 habitants (recensement 1976), dont  $\frac{1}{2}\%$  seulement sont d'origine française. Sa capitale, Saint-Jean, a une population de 86,576 âmes (recensement 1976). Depuis 1949, cette province est représentée au Parlement canadien par 6 sénateurs nommés à la Chambre haute et par 6 députés élus à la Chambre des communes. Par ailleurs, l'Assemblée législative de Terre-Neuve se compose de 52 membres élus.



Les sujets traités dans le présent chapitre sont classés suivant le plan retenu dans les volumes 1 et 2 sur la constitution fédérale et sont d'ailleurs énumérés dans la table des matières qui précède. Il convient de signaler immédiatement qu'il n'y a aucune loi terre-neuvienne sur les droits linguistiques.

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GENERAL CONSTITUTIONAL ACTS



LOIS CONSTITUTIONNELLES GÉNÉRALES





## GENERAL CONSTITUTIONAL ACTS

### Introduction

The general constitutional acts applicable to Newfoundland are as follows:

1. British North America Act, 1949.

Note: This imperial statute confirming and containing the Terms of Union of Newfoundland with Canada is the basic constitutional document of the province. The text of this statute is reproduced in volume 1 of this collection, pp. B85, and subs. The provincial Terms of Union Commission Act (S.N. 1954, No. 48), not reproduced here, deals only with the study of the financial consequences of the Union with Canada.

2. British North American Act, 1867, as amended.

Note: According to Term 3 of the Terms of Union with Canada, the provisions of the British North America Act apply to Newfoundland as if this province had been one of the original provinces. This imperial statute is reproduced in volume 1 of this collection, pp. A10, and subs.

3. Labrador Act, R.S.N. 1970, c. 192, as amended.

Note: This provincial statute, reproduced below, recognises in official matters the coast of Labrador as part of the province of Newfoundland.

4. Federal Courts Jurisdiction Act, R.S.N. 1970, c. 127, as amended.

Note: This provincial statute, reproduced below, deals with the jurisdiction of the Supreme Court and the Federal Court of Canada concerning controversies between Newfoundland and Canada or any other province, and the validity of federal or Newfoundland statutes.

5. Judicature Act, R.S.N. 1970, c. 187, as amended.

Note: Section 6 of this provincial statute, reproduced below under "Judicial Power", deals with the authority of the Lieutenant General in Council to refer any constitutional or other question to the Court of Appeal of Newfoundland for consideration.

Selected references:

Cheffins, Ronald I., and Tucker, Ronald N., "Constitutions,"  
in Bellamy, David J., and others, The Provincial Political  
Systems; Comparative Essays, Toronto, Methuen, 1976,  
pp. 257-268.

## LOIS CONSTITUTIONNELLES GÉNÉRALES

### Introduction

Les lois constitutionnelles générales applicables à Terre-Neuve sont les suivantes:

1. Acte de l'Amérique du Nord britannique, 1949

Note: Cette loi impériale, qui ratifie et renferme les Conditions de l'union de Terre-Neuve au Canada, est le document constitutionnel fondamental de cette province. Elle est reproduite aux pages B87 et suivantes du volume 1 de cette collection. Par ailleurs, la loi terre-neuvienne intitulée Terms of Union Commission Act (S.N. 1954, no 48) et consécutive à la clause 29 des Conditions de l'union précitées, ne fait qu'établir une commission provinciale chargée d'examiner les conséquences financières de l'admission de Terre-Neuve comme province et n'est pas reproduite.

2. A.A.N.B., 1867 et ses modifications

Note: Conformément à la clause 3 des Conditions de l'union précitées, les dispositions générales de l'A.A.N.B., 1867, dont le texte est reproduit aux pages A9 et suivantes de cette collection, s'appliquent à Terre-Neuve comme si celle-ci eût été une des provinces originaires du Canada.

3. Labrador Act, R.S.N. 1970, c. 192 et ses modifications

Note: Cette loi provinciale, reproduite ci-après, reconnaît officiellement la côte du Labrador comme partie du territoire terre-neuvien.

4. Federal Courts Jurisdiction Act, R.S.N. 1970, c. 127 et ses modifications

Note: Cette loi provinciale, reproduite ci-après, traite de la compétence de la Cour suprême du Canada et de la Cour fédérale du Canada sur tout litige entre Terre-Neuve et l'état fédéral ou une autre province canadienne, de même que sur toute question relative à la validité des lois fédérales et terre-neuviennes.

5. Judicature Act, R.S.N. 1970, c. 127 et ses modifications

Note: L'art. 6 de cette loi provinciale, reproduite plus loin au chapitre "Pouvoir judiciaire" du présent fascicule, autorise le lieutenant-gouverneur en conseil à référer toute question, constitutionnelle ou autre, à la considération de la Cour d'appel de Terre-Neuve.



Source choisie

Cheffins Ronald I. et Tucker, Ronald N., "Constitutions"  
dans David J. Bellamy et al, The Provincial Political  
Systems; Comparative Essays, Toronto, Methuen, 1976,  
pp. 257-268.

# An Act Respecting the Recognition in Official Matters of that part of the Province of Newfoundland Situated on the Mainland of Canada and called Labrador

R.S.N. 1970, c. 192

with amendments to date, including 1979, c.49,  
Schedule D, Item 4

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et ses modifications à jour, y inclus 1979,  
c.49, Schedule D, Item 4

WHEREAS Term 2 of the Terms of Union of Newfoundland with Canada set forth in the Schedule to the British North America Act, 1949, provides as follows:

“2. The Province of Newfoundland shall comprise the same territory as at the date of Union, that is to say, the Island of Newfoundland and the islands adjacent thereto, the Coast of Labrador as delimited in the report delivered by the Judicial Committee of His Majesty’s Privy Council on the first day of March, 1927, and approved by His Majesty in His Privy Council on the twenty-second day of March, 1927, and the islands adjacent to the said Coast of Labrador.”;

AND WHEREAS the report delivered by the Judicial Committee of His Majesty’s Privy Council on the first day of March, 1927, and approved by His Majesty in His Privy Council on the twenty-second day of March, 1927, delimits the boundary of Labrador on the mainland of Canada as “a line drawn due north from the eastern boundary of the bay or harbour of Ance Sablon as far as the fifty-second degree of north latitude, and from thence westward along that parallel until it reaches the Romaine River, and then northward along the left or east bank of that river and its head waters to their source and from thence due north to the crest of the watershed or height of land there, and from thence westward and northward along the crest of the

## LABRADOR ACT

watershed of the rivers flowing into the Atlantic Ocean until it reaches Cape Chidley”;

AND WHEREAS it is deemed desirable to give full official recognition in all matters to that large, important and rapidly growing part of this province called Labrador;

Short title.

1. This Act may be cited as The Labrador Act.

Labrador to be represented in Coat of Arms.

2. Notwithstanding anything to the contrary contained in The Newfoundland Coat of Arms Act, the Lieutenant-Governor in Council may by order add to the Armes and Ensignes of Newfoundland, prescribed in that Act, to provide for the official recognition of Labrador therein, and any addition made in pursuance of this section shall be deposited in the Department of Tourism, Recreation and Culture. 1979, c.49, Sch.D, Item 4.

Reference to Labrador.

3. In all publications of and in all stationery used by any Department of the Government of Newfoundland, wherever a reference is made to the province, a reference shall be made also to Labrador as part of the province.

Use of the word “Labrador” in other matters.

4. The Lieutenant-Governor in Council may by order prescribe the use of the word “Labrador” coupled with references to the province in such other matters and things as he may deem desirable.



# An Act Respecting the Supreme Court of Canada and the Exchequer Court of Canada

R.S.N. 1970, c.127

with amendments to date, including 1977, c.46, s.3

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et ses modifications à jour, y inclus 1977, c.46, s.3

**1.** This Act may be cited as The Federal Courts Jurisdiction Act. Short title.

**2.** The Supreme Court of Canada and the Federal Court of Canada, or the Supreme Court of Canada alone, according to the provisions of the *Supreme Court Act* (Canada) and the *Federal Court Act* (Canada) have jurisdiction in any Jurisdiction of Supreme Court of Canada and Federal Court of Canada.

(a) controversy between Canada and Newfoundland;

(b) controversy between Newfoundland and any other province of Canada that has passed an Act similar to this Act;

(c) suit, action or proceeding in which the parties by their pleadings have raised the question of the validity of an Act of the Parliament of Canada or of an Act of the Legislature of Newfoundland, if a judge of the court in which any such suit, action, or proceeding is pending decides that the question is material, and if he so decides the judge shall, at the request of the parties, and may, without such request, order the case to be removed to the Supreme Court of Canada so that the question may be decided. 1977, c.46, s.3.

**3.** In case sittings of the Supreme Court of Canada or of the Federal Court of Canada or of any judge thereof are appointed to be held in any place in Newfoundland in which a court house is situate, the court or judge has in all respects the same authority as a judge of the Supreme Court of Newfoundland in regard to the use of the court house and other buildings or apartments set apart in that place for the administration of justice. 1977, c.46, s.3. Use of court houses, etc., by federal courts.



INTERGOVERNMENTAL RELATIONS



RELATIONS INTERGOUVERNEMENTALES





## INTERGOVERNMENTAL RELATIONS

### Introduction

In 1975, the province of Newfoundland has conferred the responsibility for its intergovernmental relations to a special agency by establishing an Intergovernmental Affairs Secretariat attached to the Executive Council, as provided for by the Intergovernmental Affairs Act (S.N. 1975, No. 10), reproduced below. It operates under the direction of the Minister for Intergovernmental Affairs. The Minister is responsible for Newfoundland intergovernmental relations with the governments of Canada, other provinces and territories, and foreign countries.

With the federal government the province deals on such important matters as natural resources and fiscal relations. While the natural resources on land belong to the province pursuant to Term 37 of the Terms of Union with Canada, the jurisdiction over off-shore mineral resources has been the subject of controversies with the federal government since 1949. Federal-provincial fiscal relations were discussed in volume 2 of this collection, pp. D167, and subs. See also Financial Terms contained in Terms 23 to 29 of the Terms of Union with Canada (volume 1 of this collection, pp. B104, and subs), as well as two federal statutes enacted pursuant to Term 29: 1) Newfoundland Additional Grants Act, S.C. 1959, c. 48; and 2) Newfoundland Additional Financial Assistance Act, of 1966, in R.S.C. 1970, c. N-20, and two provincial statutes: 1) Reciprocal Taxation Agreement Act, S.N. 1977, c. 86, and 2) Taxation Agreement Act, R.S.N. 1970, c. 367, as amended, not reproduced here. Other provincial statutes, such as the Federal-Provincial Power Act, 1962 (S.N. 1962, No. 15), and the Agreement for Policing the Province Act (R.S.N. 1970, c. 367), authorize the Lieutenant Governor in Council to enter into agreements with the federal government in specified areas.

Selected references:

Leach, Richard H., "Interprovincial Co-ordination," in Ballamy, David J., and others, The Provincial Political Systems, op. cit., pp. 381-394.

"Public Finance in Newfoundland," in McAllister, R.I., ed., Newfoundland and Labrador, op. cit., pp. 19-26.



## RELATIONS INTERGOUVERNEMENTALES

### Introduction

Par une loi intitulée Intergovernmental Affairs Act (S. N. 1975, no 10) et reproduite ci-après, Terre-Neuve a mis sur pied un secrétariat des affaires intergouvernementales rattaché au conseil exécutif et dirigé par le ministre responsable des affaires intergouvernementales. Celui-ci coordonne et dirige les relations intergouvernementales de Terre-Neuve avec l'état fédéral, les autres provinces et territoires canadiens et étrangers.

Dans ses relations avec l'état fédéral, cette province traite de questions aussi importantes que les ressources naturelles et les relations fiscales. Bien que l'art. 37 des Conditions de l'union de Terre-Neuve au Canada consacre le droit de propriété de la province sur les ressources naturelles sises sur son territoire, la question de la compétence sur les richesses minières du sous-sol marin demeure l'objet d'un litige entre Terre-Neuve et le gouvernement fédéral depuis 1949. Quant au domaine des relations fiscales fédérales-provinciales il est couvert, de façon générale, aux pages D169 et suivantes du volume 2 de cette collection. De façon plus particulière, il y a lieu de prendre connaissance des conditions financières de l'admission de Terre-Neuve dans la Confédération énoncées dans les clauses 23 à 29 des Conditions de l'union citées plus haut et reproduites aux pages B105 et suivantes du volume 1 de cette collection. Deux lois fédérales donnant effet à la clause 29 des Conditions de l'union, soit la Loi sur les subventions supplémentaires payables à Terre-Neuve (S.C. 1959, c. 48) et la Loi de 1966 relative au supplément d'aide financière à Terre-Neuve (S.R.C. 1970, c. N-20), de même que les lois provinciales intitulées Reciprocal Taxation Agreement Act (S.N. 1977, c. 86) et Taxation Agreement Act (R.S.N. 1970, c. 367 et ses modifications), peuvent également être consultées; ces lois ne sont toutefois pas reproduites. D'autres lois provinciales, non reproduites ici, comme le Federal-Provincial Power Act, 1962 (S.N. 1962, no 15) et l'Agreement for Policing the Province Act (R.S.N. 1970, c. 367), autorisent le lieutenant-gouverneur en conseil à conclure des ententes avec le gouvernement fédéral dans les domaines que chacune d'elles couvre respectivement.

Sources choisies

- Leach, Richard H., "Interprovincial Co-ordination", dans Davis J. Bellamy et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 381-394.
- "Public Finance in Newfoundland", dans R. I. McAllister (ed.), Newfoundland and Labrador, the First Fifteen Years of Confederation, St. John's, Dicks, 1966, pp. 19-26.

AN ACT TO PROVIDE FOR THE DIRECTION  
OF INTERGOVERNMENTAL AFFAIRS  
IN THE PROVINCE.

S.N. 1975, No. 10

*Be it enacted by the Lieutenant-Governor and House of  
Assembly in Legislative Session convened, as follows:*

1. This Act may be cited as The Intergovernmental Affairs Act, 1975. Short title.
2. In this Act, Interpretation.
  - (a) "intergovernmental agreement" means an agreement between Her Majesty in right of the Province and one or more of Her Majesty in right of Canada, Her Majesty in right of any other province and any other sovereign government;
  - (b) "Minister" means the Minister designated by the Lieutenant-Governor in Council from time to time to direct the administration of the Secretariat;
  - (c) "Province" means the Province of Newfoundland;
  - (d) "Secretariat" means the Secretariat established by Section 3; and
  - (e) "sovereign government" includes the Government of Canada, the government of each of the provinces and territories of Canada, and the government of every foreign country or state.
3. There is hereby established an Intergovernmental Affairs Secretariat to the Executive Council which shall function in addition to the other secretariats to the Council heretofore existing. Establishment of Secretariat.
- 4.--(1) The Secretariat shall operate under the direction of the Minister of the Crown to whom it is entrusted from time to time by order of the Lieutenant-Governor in Council. Administration.



## *Intergovernmental Affairs Act*

Style of  
Minister.

(2) In exercising the powers and discharging the duties conferred or imposed on him by this Act, the Minister shall act under the style of office of the "Minister for Intergovernmental Affairs".

Executive  
Director.

5.—(1) The Lieutenant-Governor in Council may appoint an Executive Director of the Secretariat to hold office during pleasure and to perform such duties and functions as may be assigned to him from time to time by the Minister, and the Executive Director shall rank as and have all of the powers of a deputy head of a department.

Officers,  
clerks, etc.

(2) Such other officers, clerks and employees as are necessary for the proper conduct of the business of the Secretariat shall be appointed in the manner authorized by law.

Powers and  
duties of  
Minister.

### 6. The Minister

(a) is responsible for the co-ordination of all policies, programs and activities of the Government of the Province and its agencies in relation to any sovereign government and its agencies;

(b) shall conduct a continuing review of

(i) all policies, programs and activities of the Government of the Province and its agencies in relation to any sovereign government and its agencies,

(ii) all intergovernmental agreements, and

(iii) all relevant legislation pertaining to those policies, programs, activities and agreements.

(c) shall be a party to the negotiation of all proposed intergovernmental agreements; and

(d) shall from time to time take such action as he considers necessary to initiate or maintain intergovernmental co-

*Intergovernmental Affairs Act*

operation between the Government of the Province and any sovereign government.

7. Notwithstanding any other Act or law, every intergovernmental agreement shall, before it is executed, be submitted to the Minister, and except any such agreement in respect of which the Lieutenant-Governor in Council by order directs otherwise, every intergovernmental agreement shall be signed by the Minister as well as the Minister administering the department of the Government of the Province to which it relates, and any intergovernmental agreement which is not executed in accordance with this section is not binding on the Province or any agency or official thereof.

Intergovernmental agreements.

8. Section 18 of The Government Reorganization (General and Miscellaneous Provisions) Act, 1973, the Act No. 48 of 1973 is repealed.

Repeal.





EXECUTIVE POWER



POUVOIR EXÉCUTIF



## EXECUTIVE POWER

### Introduction

The executive power in Newfoundland derives its statutory authority from the British North America Act, sections 58 to 62, 66 and 67, and from the Terms of Union with Canada, incorporated into the British North America Act, 1949, especially Terms 8 to 13. Both sources are reproduced in volume 1 of this collection, pp. A46-A50, and B92-B94. The following provincial statute, reproduced below, should also be added: President of the Council Act, R.S.N. 1970, c. 303, as amended.

According to these statutory provisions and constitutional conventions, the executive power in Newfoundland is vested in the Lieutenant Governor advised by the Executive Council. The Lieutenant Governor is the representative of the Sovereign in right of the province, and is appointed by the Governor General in Council for a period of five years. The executive branch of the government, the Executive Council, also known as the Cabinet, consists of the Ministers of the Crown, headed by the Premier (First Minister) of the province, who is the leader of the political party having the confidence of the House of Assembly. Ministers are appointed by the Lieutenant Governor on the advice of the Premier. The functions and powers of the provincial Executive are similar to those of the components of the federal executive power as described in volume 2 of this collection, Chapter E. The general observations contained in the introduction (pp. E5 and E6), and in sections on the Governor General (p. E23), the Lieutenant Governor (p. E39) and the Cabinet (pp. E47 and E48) apply mutadis mutandis to this chapter as well. In effect it is the Premier and his Cabinet who, according to constitutional conventions, exercise the executive power while the Lieutenant Governor remains the nominal head of the provincial executive.

Newfoundland does not have a general statute regulating the organization of the Executive, which would describe the powers and duties of its various departments. Instead this is accomplished by individual statutes creating each executive department. These statutes are listed in the pink table of public general statutes at the back of each sessional volume of Statutes of Newfoundland. See also



the Government Reorganization (General and Miscellaneous Provisions) Act, S.N. 1973, No. 48. Existing departments can be located in the Directory, Government of Newfoundland and Labrador, and the Corpus Administrative Index. Finally, it should be mentioned that government departments and agencies are submitted to the scrutiny of the Ombudsman as defined in the Parliamentary Commissioner (Ombudsman) Act, R.S.N. 1970, c. 285, as amended.

Selected references:

Bellamy, David J., and others, The Provincial Political System, op. cit., pp. 297-368 (see especially Chapter 20. The Lieutenant-Governors, by John T. Saywell, and Chapter 21. Cabinets, by Kenneths Bryden).

## POUVOIR EXÉCUTIF

### Introduction

A Terre-Neuve, le pouvoir exécutif trouve son fondement législatif dans l'A.A.N.B., art. 58 à 62, 66 et 67, dans les clauses 8 à 13 des Conditions de l'union de Terre-Neuve au Canada incorporées à l'A.A.N.B., 1949, et dans la loi provinciale intitulée President of the Council Act, R.S.N. 1970, c. 303 et ses modifications, reproduite ci-après. Les deux premières lois impériales mentionnées ci-haut sont respectivement reproduites aux pages A9 et B87 et suivantes du volume 1 de cette collection.

Conformément à cette législation et à la pratique constitutionnelle, le pouvoir exécutif de cette province est dévolu au lieutenant-gouverneur assisté d'un conseil exécutif. Le lieutenant-gouverneur est le représentant de la Reine dans la province. Il est nommé par le gouverneur général en conseil pour une période de cinq ans. Quant au conseil exécutif, connu aussi sous le nom de cabinet, il se compose des ministres de la Couronne sous la direction du premier ministre de la province. D'après l'usage, c'est le chef du parti politique majoritairement élu à l'Assemblée législative qui remplit le poste de premier ministre, alors que les autres ministres sont nommés par le lieutenant-gouverneur sur l'avis du premier ministre provincial. Le pouvoir exécutif d'une province exerce sensiblement les mêmes fonctions que celles des diverses composantes du pouvoir exécutif fédéral dont il est question au chapitre E du volume 2 de cette collection. Les observations qui sont faites dans l'introduction de ce chapitre (pp. E7 et E8), ainsi que dans les paragraphes sur le gouverneur général (p. E25), sur le lieutenant-gouverneur (pp. E40 et suivantes) et sur le cabinet des ministres (pp. E49 et E50), s'appliquent mutatis mutandis au présent chapitre. En réalité, comme le veut la pratique constitutionnelle, c'est le premier ministre et son cabinet qui exercent le pouvoir exécutif, tandis que le lieutenant-gouverneur demeure le chef nominal de l'exécutif provincial.

Terre-Neuve ne dispose d'aucune loi-cadre qui décrive l'organisation générale de son pouvoir exécutif. Ce sont plutôt des lois particulières qui définissent les pouvoirs et devoirs de chaque ministère établi, sans oublier la loi intitulée Gouvernement Reorganization (General and Miscellaneous Provisions) Act, S.N. 1973, no 48. Les lois constitutives de chaque ministère sont mentionnées dans le Table of Public General Statutes des Statutes of Newfoundland. Pour

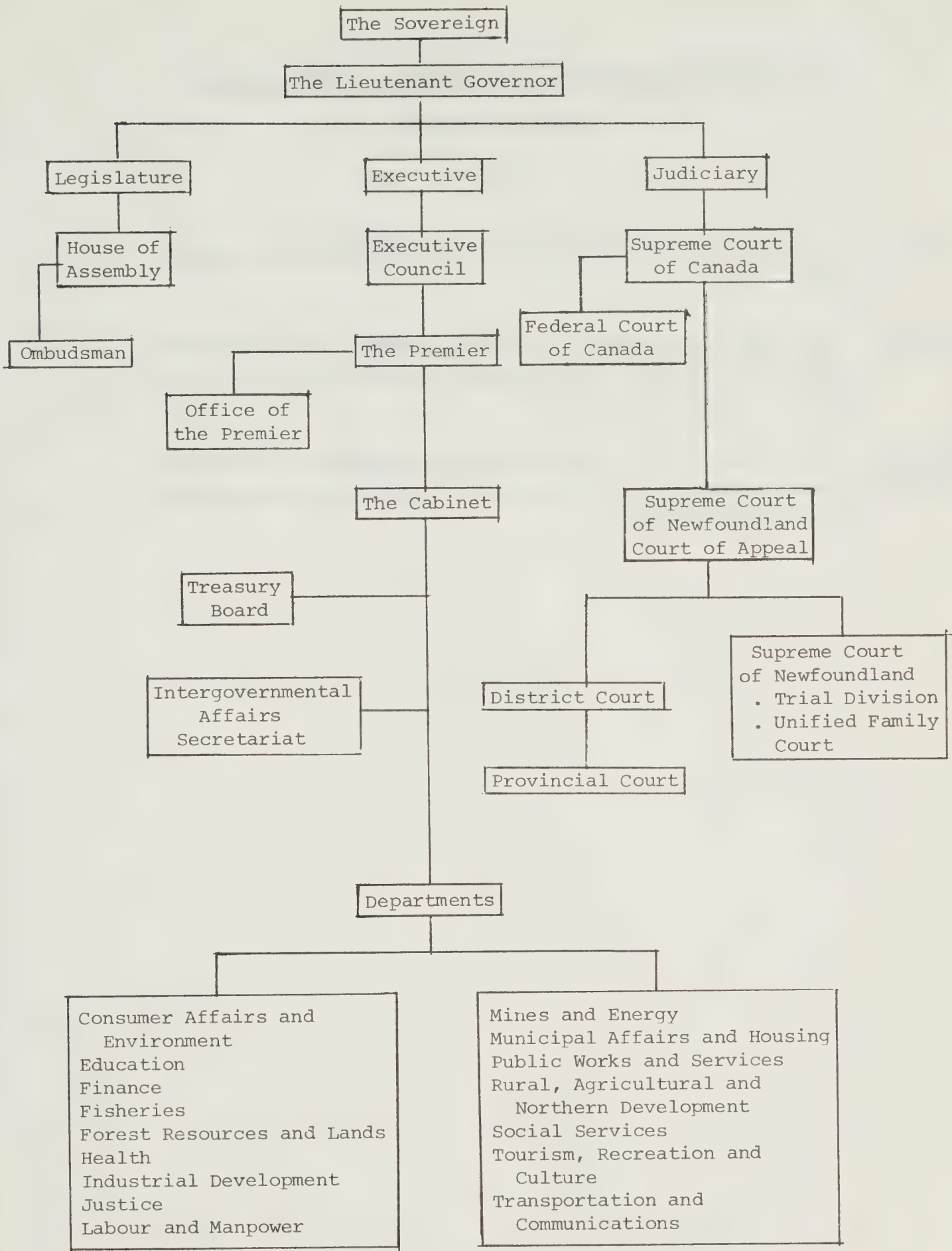
connaître les ministères existants, on peut aussi consulter le Directory, Government of Newfoundland and Labrador et le service sur feuilles mobiles intitulé Corpus Administrative Index. Enfin, il y a lieu de souligner que les ministères et sociétés d'état de la province sont soumis au pouvoir d'enquête de l'ombudsman tel que défini dans le Parliamentary Commissioner (Ombudsman) Act, R.S.N. 1970, c. 285 et ses modifications.

#### Source choisie

Bellamy, David, J. et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, 394 p. Consulter particulièrement les pp. 297-360, soit le ch. 20: The Lieutenant-Governors, par John T. Saywell et le ch. 21: Cabinets par Kenneth Bruden.



The Government of Newfoundland



## **An Act Constituting the Office of President of the Council**

R.S.N. 1970, c. 303

Short title

**1.** This Act may be cited as The President of the Council Act.

President of  
the Council.

**2.** The Lieutenant-Governor may appoint, by Commission under the Great Seal of the province, from the Executive Council, a President of the Council.

Functions of  
the President  
of the Council.

**3.** In the absence of the Premier, the President of the Council may preside over, or summon and preside over, meetings of the Executive Council.

LEGISLATIVE POWER



POUVOIR LÉGISLATIF





## LEGISLATIVE POWER

### Introduction

The statutory provisions concerning the legislative power of Newfoundland deal with the composition and function of the Legislature, describe the present electoral system, and treat the examination, publication and interpretation of statutes and regulations. This chapter is therefore divided as follows:

- a. Legislative bodies.
- b. Representation.
- c. Statutes and regulations.

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## POUVOIR LÉGISLATIF

### Introduction

La législation de Terre-Neuve relative à l'autorité législative porte sur les composantes et le fonctionnement du pouvoir législatif, décrit le système électoral en vigueur et traite de l'examen, de la publication et de l'interprétation des textes législatifs et réglementaires. Ce chapitre est donc divisé comme suit:

- a. Les composantes du pouvoir législatif.
- b. La représentation.
- c. Les lois et règlements.

## LEGISLATIVE BODIES

### Introduction

The legislature of Newfoundland, originally set up in 1832, with a General Assembly and a Legislative Council, survived with some changes until 1934, when the existing constitution was suspended, and government entrusted to a special Commission of Government. In 1949, the Legislative Council was not revived, and at present the legislative power in Newfoundland is exercised by the Lieutenant Governor and one elected chamber, the House of Assembly, as provided for by the Terms of Union with Canada (Terms 14 to 16, see text in volume 1 of this collection, pp. B94-B96), and the House of Assembly Act (R.S.N. 1970, c. 159, as amended). In the exercise of its function, the Newfoundland House of Assembly has to follow the division of legislative powers between the federal and provincial governments as set up especially in sections 91 to 95 of the British North America Act. In their relations with the executive and the judicial powers, the holders of the legislative power also have to take into consideration constitutional principles relating to the parliamentary system and the form of responsible government which prevail in Canada. These principles are stated briefly in the introduction to the federal legislative power, in volume 2 of this collection, pp. F5, and subs.

The Lieutenant Governor, the chief executive officer of the province, exercises some legislative functions. He invites the leader of the political party which has obtained a majority of the popular votes in an election to form a new government. He summons, adjourns or dissolves the House of Assembly; delivers the Speech from the Throne at the opening of the Assembly, which is prepared by the Cabinet, and formally opens and closes each session of the House of Assembly. The major legislative function of the Lieutenant Governor is to give royal assent to all bills passed by the House of Assembly, giving them final legal effect. He can, however, withhold the assent or reserve the bill for the approbation by the Governor General of Canada, but this power is rarely used. The House of Assembly, on the other hand, enacts legislation within its jurisdiction, exercises supervision and control over government and administrative actions, and serves as a forum for discussion on



matters of provincial, regional or local interest. It is for the province what the House of Commons is for the federal government. It is governed by the House of Assembly Act, reproduced below, and by implementing regulations. The House of Assembly is composed of 52 members elected for a maximum statutory term of five years. It may be dissolved at any time during that period by the Lieutenant Governor on the advice of the Premier.

Selected references:

Laundy, Philip, "Legislatures", in Bellamy, David J., and others, The Provincial Political Systems, op. cit., pp. 280-296.

## LES COMPOSANTES DU POUVOIR LÉGISLATIF

### Introduction

La législature de Terre-Neuve a été instituée en 1832. Elle se composait alors de l'Assemblée générale et du Conseil législatif. Cette structure fut maintenue sans modification importante jusqu'en 1934, date à laquelle la constitution en vigueur fut suspendue et l'administration de la province fut confiée à une commission gouvernementale. Lors de l'admission de cette province dans la Confédération en 1949, le Conseil législatif ne fut pas rétabli. Actuellement, suivant les clauses 14 à 16 des Conditions de l'union de Terre-Neuve au Canada reproduites aux pages B95 à B97 du volume 1 de cette collection et conformément aux dispositions du House of Assembly Act (R.S.N. 1970, c. 159 et ses modifications) reproduit ci-après, le pouvoir législatif terre-neuvien est dévolu au lieutenant-gouverneur et à une chambre élue désignée sous le nom d'Assemblée législative. Dans l'exercice de ses fonctions, le législateur de Terre-Neuve doit respecter le partage des compétences législatives entre l'état fédéral et les provinces tel qu'établi plus particulièrement aux art. 91 à 95 de l'A.A.N.B. Dans leurs relations avec les pouvoirs exécutif et judiciaire, les détenteurs de l'autorité législative doivent également tenir compte des principes constitutionnels rattachés au régime parlementaire et au système de gouvernement responsable en vigueur au Canada. Ces principes sont brièvement énoncés dans l'introduction générale sur le pouvoir législatif fédéral aux pages F8 et suivantes du volume 2 de cette collection.

En plus d'être le chef de l'exécutif provincial, le lieutenant-gouverneur exerce certaines fonctions reliées au pouvoir législatif. C'est lui qui, à la suite d'une élection, invite le chef du parti politique qui a fait élire le plus grand nombre de députés à former le nouveau gouvernement. C'est lui qui convoque, proroge et dissout chaque législature et préside l'ouverture de chaque session en faisant la lecture du discours du trône préparé par le premier ministre et son cabinet. Sa principale fonction parlementaire consiste à sanctionner les lois adoptées par l'Assemblée législative et à leur donner ainsi une existence juridique. Il peut aussi désavouer ces lois ou les réserver à l'approbation du gouverneur général du Canada; ce pouvoir de désaveu ou de réserve est, toutefois, rarement exercé. De son côté, l'Assemblée législative remplit la fonction de législateur, exerce une surveillance et un contrôle sur les activités du gouvernement et de l'administration et sert de forum de délibérations

où sont débattues les questions d'intérêt provincial, régional et local. Elle est en quelque sorte à la province ce que la Chambre des communes est à l'état fédéral. Elle est régie par les lois intitulées House of Assembly Act et Legislative Disabilities Act reproduites ci-après, ainsi que par les règlements qu'elle s'est donnés sous l'autorité de la loi. Elle se compose de 52 députés, chacun représentant l'un ou l'autre des 52 districts électoraux de la province. Les députés sont élus pour une période n'excédant pas cinq ans. Cependant, le lieutenant-gouverneur, sur l'avis du premier ministre, peut dissoudre l'assemblée législative en tout temps avant l'expiration de ce terme.

Source choisie

Laundy, Philip, "Legislatures" dans David J. Bellamy et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 280-296.



## HOUSE OF ASSEMBLY ACT

R.S.N. 1970, c. 159

with amendments to date, including 1979, c.2

Note:

Not reproduced is section 4, relating to electoral districts. In addition to the Legislative Disabilities Act, reproduced below, the following statutes should be consulted:

1. Terms of Unions (Terms 14 to 16, and Schedule), confirmed by the British North America Act, 1949, reproduced in volume 1 of this collection, pp. B94-B96.
2. Members of the House of Assembly (Retiring Allowances) Act, S. N. 1975-76, Np. 15, as amended.
3. Office of the Speaker (Vacancy) Act, R.S. N. 1970, c. 279.
4. Parliamentary Assistant Act, R.S.N. 1970, c. 284.
5. Clerk of the House of Assembly Act, R.S.N. 1970, c. 45
6. Internal Economy Commission Act, R.S.N. 1970, c. 181, as amended.

HOUSE OF ASSEMBLY ACT

R.S.N. 1970, c. 159

et ses modifications à jour, y inclus 1979, c.2

Note:

L'art. 4 sur les circonscriptions électorales n'est pas reproduit. Outre le Legislative Disabilities Act reproduit immédiatement à la suite de la présente loi, il y aurait lieu de consulter les lois suivantes:

1. Acte de l'Amérique du Nord britannique, 1949, clauses 14 à 16 et annexe des Conditions de l'union de Terre-Neuve au Canada, pp. B95 et suivantes du volume 1 de cette collection.
2. Members of the House of Assembly (Retiring Allowances) Act, S.N. 1975-76, no 15, et ses modifications
3. Office of the Speaker (Vacancy) Act, R.S.N. 1970, c. 279
4. Parliamentary Assistant Act, R.S.N. 1970, c. 284
5. Clerk of the House of Assembly Act, R.S.N. 1970, c. 45
6. Internal Economy Commission Act, R.S.N. 1970, c. 181 et ses modifications.

An Act Respecting the House of Assembly

Short title. 1. This Act may be cited as The House of Assembly Act.

Duration of House of Assembly. 2. The House of Assembly shall continue, notwithstanding the demise of Her Majesty, for five years from the day on which it shall by proclamation be appointed to meet, unless sooner dissolved, and no longer.

Number of members in House. 3.(1) The House of Assembly shall consist of fifty-two members.  
(2) A quorum of the House of Assembly is fourteen members.1974,No. 112, s.2; 1979, c.2, s.1.

.....

Power to establish rules. 5. The House may establish rules for its government and the attendance of its members and the conduct of its business, and for limiting the length of time that members may speak, and may alter, amend and repeal the same: Provided that no such rules shall be altered, amended or repealed except by a vote of two-thirds of the members of such House: Provided also, that, save as aforesaid, no such rule or order or anything in this Act shall, or shall be construed to, limit or restrict the liberty and privilege of speech or debate of such House, or any rights or privileges of such House now existing.

Privileges of House. 6. Upon any enquiry touching the privileges, immunities or powers of the House of Assembly, or any of the committees or members thereof, respectively, any copy of the Journals of such House, printed or purporting to be printed by the order of the same, shall be admitted as *prima facie* evidence of such Journals by all Courts, Justices and others, without any proof being given that such copy was so printed.



## HOUSE OF ASSEMBLY ACT

**7.** The House or any committee may require that facts, matters and things relating to the subject of enquiry before the House or such committee be verified or otherwise ascertained by the oral examination of witnesses, and may examine such witnesses upon oath; and for that purpose the Speaker or Clerk of the House, or the Chairman or Clerk of such committee, may administer an oath in the form following, or to the like effect, to any such witness:

Right of House or committee to examine witness on oath.

“The evidence you shall give to the House (or committee) touching (stating here the matter *then under consideration*) shall be the truth, the whole truth, and nothing but the truth. So help you God.”.

**8.** When witnesses are not required to be orally examined before the House, or a committee thereof, any oath, affirmation, declaration, or affidavit in writing, which is required to be made or taken by or according to any rule or order of such House or committee, and in respect of any matter or thing pending or proceeding before such House or committee, may be made and taken before the Clerk of the House, any Commissioner for taking affidavits in the Supreme Court, or any Notary Public.

Affidavit or declaration may be made before clerk.

**9.** Any person examined before the House or any committee thereof, who shall wilfully give any false testimony on any question material to the subject matter which the House or such committee is then engaged in investigating or enquiring into, shall be guilty of the crime of perjury, and, on indictment therefor and conviction thereof before the Supreme Court, be subject to the penalties now attaching to the crime of perjury.

False testimony; perjury.

**10.** The House may at all times command and compel the attendance before the House, or before any committee thereof, of such person, and the production of such papers and things as such House or committee may deem necessary for any of its proceedings or deliberations. Any person neglecting or refusing to attend, or to produce such papers and things before such House or committee, shall be guilty of a violation of this Act: Provided, that no person shall be liable to produce any paper or document which he would not be compelled to produce in a Court of Justice or from the production of which he may be privileged by law.

Power of House to compel attendance of witness.

## HOUSE OF ASSEMBLY ACT

Infringements  
of Act.

**11.** The following acts, matters and things are prohibited and shall be deemed infringements of this Act:

- (a) assaults upon members of the House during any Session of the Legislature;
- (b) obstructing, threatening, or attempting to force or intimidate members of the House;
- (c) the refusal or failure of any officer of the House, or other person, to obey any rule, order or resolution of the House;
- (d) the offering to, or acceptance by, any member of a bribe to influence him in his proceedings as such member;
- (e) assaults upon, or interference with, the officers of the House, while in the execution of their duty;
- (f) tampering with any witness in respect of his evidence, to be given to the House or any committee thereof, or directly or indirectly endeavouring to deter or hinder any person from appearing or giving evidence;
- (g) presenting to the House or to any committee thereof, any forged or falsified document with intent to deceive such House or committee;
- (h) forging, falsifying or unlawfully altering any of the records of the House or of any committee, or any document or petition presented or filed or intended to be presented or filed before such House or committee, or the setting or subscribing by any person of the name of any other person to any such document or petition with intent to deceive.

Persons not  
liable for  
damages for  
act done by  
authority of  
House.

**12.** No person shall be liable, in damages or otherwise, for any act done under authority of the House, and within its legal power, or under or by virtue of any warrant issued under such authority. All such warrants may command the aid and assistance of sheriffs, bailiffs, constables and others; and every refusal

## HOUSE OF ASSEMBLY ACT

or failure to give such aid or assistance, when required, shall be an infringement of this Act.

**13.** If at any time during a session of the House of Assembly a member of the House of Assembly other than the Speaker performs the duties and exercises the authority of the Speaker, pursuant to the Standing Orders or other Order or Resolution of the House of Assembly,

Acts done by member of House while acting as Speaker.

(a) every act done by such member in the proper discharge of his duties shall have the same effect and validity as if it had been done by the Speaker; and

(b) every Act passed, every order made and everything done by the House of Assembly while such member is acting as Speaker shall be as valid and effectual as if the Speaker himself was in the Chair.

**14.** No member of the House shall be liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion, or otherwise, or said by him, before such House.

Freedom of members from arrest, etc., in certain cases.

**15.** It shall be lawful in every civil proceedings against any person for printing any extract from, or abstract of any report, paper, votes or proceedings of the House, to give evidence (under the general issue or denial) of such report, paper, votes or proceedings to show that such extract or abstract was published *bona fide* and without malice; and if such shall be the opinion of the Court, or of the jury, as the case may be, judgment shall be rendered or a verdict shall be entered for the defendant.

*Bona fide* publications.

**16.** In this Act the word "House" shall mean the House of Assembly of Newfoundland, and the word "committee" shall mean any standing or select committee of the House.

Interpretation.

**17.** Any person violating Sections 10 or 11 of this Act shall, upon conviction, be subject to a penalty not exceeding one hundred dollars; and, in default of payment, to imprisonment for such time (not exceeding three months), during the session of the Legislature then being held, as may be determined by the House.

Penal section.



# HOUSE OF ASSEMBLY ACT

Proceedings;  
how taken.

18. Proceedings for enquiry into any violation of the said sections shall be had and taken by the House or a committee thereof, and the warrant or summons of the Speaker or chairman of such committee shall have the effect and force of a summons or warrant of a stipendiary magistrate.

Privileges.

19. The House of Assembly and the members thereof shall hold, enjoy, and exercise such and the like privileges, immunities, and powers as are now held, enjoyed, and exercised by the House of Commons of the Parliament of Canada and by the members thereof.

Certain  
Rules of  
House of  
Assembly  
repealed.

20. The Rules and Orders for the Proceedings of the House of Assembly which were in force immediately before the adoption on the eighth day of May, 1951, of Standing Orders of the House of Assembly are repealed.

# An Act Respecting Legislative Disabilities and the Vacation of Seats in the House of Assembly

R.S.N. 1970, c.202

with amendments to date, including 1977, c.14

et ses modifications à jour, y inclus 1977, c.14

1. This Act may be cited as The Legislative Disabilities Act. Short title.
2. Except as in Section 3 provided no person shall be eligible to be elected, or shall sit or vote as a member of the House of Assembly Persons holding office under Government not eligible to be elected members of House of Assembly.
  - (a) who shall hold any office, place or appointment of profit or emolument from or under the Government of this province, or from or under the Legislature, or from or under any board or public body, the members whereof are appointed by the Government, or
  - (b) who shall directly or indirectly by himself or by any person in trust for him or for his use or benefit, or on his account, undertake, execute or enjoy, in whole or in part, any contract or agreement for or on account of the public service.
3. The above section shall not apply or extend to or include or in any way affect the following persons, that is to say: Exceptions.
  - (1) Any person holding
    - (a) office as a Minister of the Crown;
    - (b) office as the
      - (i) Speaker,
      - (ii) Deputy Speaker,

LEGISLATIVE DISABILITIES ACT

- (iii) Chairman of Committees, or
- (iv) Deputy Chairman of Committees  
of the House of Assembly;

(c) office as

- (i) the Parliamentary Assistant to the Premier,
- (ii) a Special Assistant to the Premier;

or

(d) the recognized position of

- (i) Opposition House Leader,
- (ii) Chief Government Whip, or
- (iii) Chief Opposition Whip

in the House of Assembly.

- (2) Any person who may hold a commission or appointment in Her Majesty's Navy, Army or Air Force.
- (3) Any person who may hold any office which now is or hereafter may be compulsory or obligatory on pain of fine or penalty for non-acceptance.
- (4) Any person who shall accept any acting appointment when such acting appointment shall not be held for a longer period than six months: Provided that no person shall hold an acting appointment for a longer period than six months or more than one acting appointment for a longer time in the aggregate than six months, during the continuance of any General Assembly, except in the case provided for by subsection 13.
- (5) Any person holding any office, place or appointment from or under the Government, or from or under the Legislature, or from or under any public board or other public body, if such person hold such office, place or appointment upon the condition of discharging and do truly discharge the duties thereof without being entitled to or actually receiving salary, pay, profit or emolument for the same.
- (6) Any person elected or appointed to any commission or committee, whether within or without the Legislature,



## LEGISLATIVE DISABILITIES ACT

for the purpose of discharging duties in relation to the Legislature or legislation, whether in or out of Legislative Session.

(7) Any person appointed to perform or discharge any act or function in relation to the compensation of parties whose interests in lands or whose rights are affected by any Act of the Legislature: Provided that such appointment be for a specified purpose or definite object and be not of a permanent character, nor an office, place or appointment conferred for life, or during good behaviour, or during the pleasure of the Crown.

(8) Any member of a School Board within the meaning of *The Schools Act* or any member of a Hospital Board within the meaning of *The Hospitals Act, 1971*.

(8A) Any employee of a School Board who is employed during the period when the Assembly is not sitting.

(8B) Any person appointed by the Board of Regents of the Memorial University of Newfoundland who is employed during the period when the Assembly is not sitting.

(9) (i) Any qualified barrister or solicitor acting as counsel or solicitor for the Crown, the Government or the Legislature, or for any public department, Board, Commission or other legally constituted public body in any civil, criminal or quasi-criminal proceeding;

(ii) Any qualified barrister or solicitor acting as legal adviser to any public department, board, commission or other legally constituted public body: Provided that in any of the cases mentioned in this paragraph the barrister or solicitor is not employed exclusively and for his whole time upon the work mentioned in the appropriate parts of this paragraph, and occupies the position of an independent professional practitioner.

(10) Any member of an incorporated body, or a member of a firm or trading company, contracting originally or by way of assignment for the public service, when such contract is made for the benefit of such incorporated body, firm or company.

(11) Any person taking or holding the debentures of the public debt or any stock the interest and repayment of which are guaranteed by the province.

## LEGISLATIVE DISABILITIES ACT

- (12) Any person who shall sell to the Government, or the Legislature, or any public board or body, any goods, wares or merchandize: Provided that such sale is not under or in the nature of a continuing contract express or implied, with any of the persons aforesaid, for the supply of goods, wares or merchandize.
- (13) Any person who shall accept an acting appointment to any office in place of the holder of such office, during his temporary absence from the province, or during his illness.
- (14) Any person who accepts the office, place or appointment and the remuneration of a director of any Company as a result of nomination by the Lieutenant-Governor in Council as a Government Director of that Company under any Act of the Legislature or any Agreement authorized by or under any Act of the Legislature enabling the appointment of a Director or Directors by the Government, and
- (15) A licensed medical or dental practitioner who performs medical or dental services during the period when the Assembly is not sitting, while in the employ of the Government of the province or in the employ of any board or public body, the members of which are appointed by the Government. 1973, No. 52, s. 2; 1977, c. 14, ss. 1 and 2.

Vacation of  
seat by  
acceptance  
of office.

- 4. Whenever any member of the House of Assembly
  - (a) accepts any office, place, or appointment of profit or emolument from or under
    - (i) the Government of Newfoundland, or
    - (ii) any board or public body the members whereof are nominated by the Government, or

## LEGISLATIVE DISABILITIES ACT

- (b) undertakes, executes, or enjoys, in whole or in part, directly or indirectly by himself or by any person whomsoever in trust for him or for his use or benefit or on his account, any contract or agreement for or on account of the public service, or
- (c) tenders, by writing under his hand, to the Lieutenant-Governor the resignation of his seat in the House of Assembly, or
- (d) becomes bankrupt or declared insolvent,

his seat shall thereupon become vacant but this section shall not apply to any person mentioned in and privileged by paragraphs (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15) of Section 3 of this Act, except in the case of the insolvency or bankruptcy or the resignation of such person, or to any person holding office as a Minister of the Crown, or to persons who may respectively hold the offices of Speaker or Deputy Speaker or Chairman of Committees, or Deputy Chairman of Committees of the House of Assembly or the member of the House of Assembly holding the recognized position of Leader of the Opposition or any person holding;

(e) office as

- (i) the Parliamentary Assistant to the Premier,
- (ii) the Opposition House Leader, or
- (iii) a Special Assistant to the Premier

or

(f) the recognized position of

- (i) Opposition House Leader,
- (ii) Chief Government Whip, or
- (iii) Chief Opposition Whip

in the House of Assembly. 1973, No. 52, s. 3.

5. Whenever a vacancy occurs in the House of Assembly the Lieutenant-Governor in Council shall, within six months after the happening of the vacancy, direct the issue of a writ of election for the election and return of a member for the district in respect of which the vacancy has occurred.

Upon vacancy writ for new election to issue.

6. Nothing herein contained shall prevent a member so accepting any of the offices named in subsection 1 of Section 3 or

Members who may be re-elected.



## LEGISLATIVE DISABILITIES ACT

who shall have resigned, or, having become bankrupt or insolvent shall have received a certificate of discharge according to law, from being re-elected a member of the House of Assembly.

Members  
resigning to  
pay expenses  
of new election.

7. Any member so resigning, and offering himself as a candidate at the election consequent on such resignation, shall bear the expenses of such election, so far as the same have been usually borne by the province, and shall, before he shall be nominated as a candidate for such election, deposit with the Minister of Provincial Affairs such sum of money, not exceeding the amount paid by the province for the last preceding election in the district for which such member had been returned, as the Lieutenant-Governor in Council shall direct; which sum, or so much thereof as may be required for that purpose, shall be applied by the said Minister of Provincial Affairs in discharge of such expenses.

Receipt of  
sessional pay not  
to vacate seat.

8. A member of the House of Assembly who receives sessional pay, voted by the Legislature, shall not be deemed on that account alone to hold an office, place or appointment of profit or emolument within the meaning of this Act.

Penalty for  
sitting and  
voting when  
ineligible or  
disqualified.

9. If any person, by this Act declared to be ineligible to be elected to, or disqualified to sit or vote in, the House of Assembly, shall be elected a member for any district, such election shall be void; and if any person disqualified, or whose seat shall have become vacant as aforesaid by this Act, shall sit or vote as a member of the House of Assembly, he shall, for each time he shall sit or vote, forfeit and pay the sum of two hundred and thirty dollars, to be recovered by any person who shall sue for the same in the Supreme Court.

## REPRESENTATION

### Introduction

Members of the House of Assembly have to be elected pursuant to the existing Newfoundland legislation concerning representation. According to this legislation, voters of Newfoundland not only elect their representative government, but also express their opinion on any matter of public concern through a plebiscite.

A large portion of this legislation deals with electoral procedure and thus extends beyond the scope of constitutional law. This chapter contains the main provisions of the system of representation and the participation of the population in the electoral process. Statutes dealing with representation are listed below, and, except when specified, are not reproduced in this collection:

1. Election Act, R.S.N. 1970, c. 106, as amended.  
Note: This statute, of which extracts are reproduced below, contains the important elements of the Newfoundland electoral system.
2. Electoral Boundaries Delimitation Act, S.N. 1973, No. 44, as amended.  
Note: This statute provides for the establishment of the Newfoundland Electoral Districts Boundaries Commission. This Commission makes recommendations concerning the division and description of electoral boundaries.
3. Conflict of Interest Act, S.N. 1973, No. 113, as amended.  
Note: This statute deals with conflict of interest of members of the House of Assembly and public employees.

### Selected references:

Bellamy, David J., and others, The Provincial Political Systems, op. cit., Chapter 2, pp. 147-196: Election Systems; Election Expenses; and Elections.

## LA REPRÉSENTATION

### Introduction

Les membres de l'Assemblée législative doivent être élus en conformité de la législation terre-neuvienne existante en matière de représentation. En plus de pouvoir procéder au choix de ses gouvernants, la population terre-neuvienne peut, en vertu de cette même législation, être consultée par voie de plébiscite sur toute question d'intérêt public. Comme une partie importante de cette législation porte sur la procédure et déborde le cadre du droit constitutionnel, le présent chapitre ne fait que dégager les principales dispositions relatives au système de représentation et de participation de la collectivité. Sauf indication au contraire, les lois ci-après résumées ne sont pas reproduites:

1. Election Act, R.S.N. 1970, c. 106 et ses modifications  
Note: Cette loi, reproduite en partie, définit les caractéristiques fondamentales du système électoral de Terre-Neuve.
2. Electoral Boundaries Delimitation Act, S.N. 1973, no 44 et ses modifications  
Note: Cette loi prévoit l'établissement d'une commission consultative sur la délimitation des circonscriptions électorales.
3. Conflict of Interest Act, S.N. 1973, no 113 et ses modifications  
Note: Cette loi décrit les situations de conflits d'intérêts dans lesquelles peuvent se placer les membres de l'Assemblée législative et de la fonction publique.

### Source choisie:

Bellamy, David J. et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, 396 p.  
 Consulter les pp. 147-196: Election Systems; Election Expenses; Election.



## ELECTION ACT

R.S.N. 1970, c. 106

with amendments to date, including 1979, c. 35, Schedule A

Note:

This statute contains 169 sections and a schedule (54 forms). Only sections dealing with the following matters are reproduced below:

- a) Qualifications and disqualifications of electors: sections 3 to 4, 10, and 27(1);
- b) Qualifications and nomination of candidates: sections 43, 44(1) and (4);
- c) Persons not qualified to act as election officers: section 58;
- d) Right to vote: section 67(1), and (7);
- e) Secrecy: section 70;
- f) Time to employees for voting: section 73;
- g) Corrupt practices: section 120(4);
- h) Election expenses: section 121(1) to (3), and (9);
- i) Controverted elections: section 122; and
- j) Plebiscites: section 169.

In addition to this statute, one should also consult section 4 of the House of Assembly Act, and the Legislative Disabilities Act, reproduced above. It would also be useful to consult regulations issued in pursuance of this statute, listed under the title of this act, in the Index of Subordinate Legislation of the Newfoundland Gazette.

## ELECTION ACT

R.S.N. 1970, c. 106

et ses modifications à jour, y inclus  
1979, c. 35, Schedule A

### Note:

Cette loi contient 169 articles et une annexe. Seuls les articles portant sur les questions suivantes sont reproduits:

- a) la qualité d'électeur et l'incapacité à voter: art. 3, 4, 10 et 27(1)
- b) l'éligibilité et la mise en nomination des candidats: art. 43, 44(1) et (4)
- c) les personnes incapables d'agir comme officiers d'élection: art. 58
- d) le droit de vote: art. 67(1) et (7)
- e) le secret du vote: art. 70
- f) le temps accordé aux employés pour voter: art. 73
- g) la corruption électorale: art. 120(4)
- h) les dépenses électorales: art. 121(1) à (3), et (9)
- i) les contestations d'élections: art. 122
- j) le plébiscite: art. 169.

Outre la présente loi, il y a lieu de consulter deux lois déjà reproduites, soit l'art. 4 du House of Assembly Act qui décrit les circonscriptions électorales, ainsi que le Legislative Disabilities Act. Il peut être utile aussi de consulter les règlements établis en vertu de la présente loi et mentionnés dans l'Index of Subordinate Legislation du Newfoundland Gazette.

An Act Respecting the Franchise of Electors  
and the Election of Members to the House  
of Assembly.

1. This Act may be cited as The Election Act. Short title.

.....

QUALIFICATION OF ELECTORS.

3. Subject to Section 3A and the other provisions of this Act, every man and every woman is qualified to vote at an election in the proper polling division of an electoral district who Qualifications  
of electors.

- (a) is of the full age of eighteen years;
- (b) is a Canadian citizen or other British subject;
- (c) has been ordinarily resident in the province for six months immediately preceding the day of election;  
and
- (d) is ordinarily resident in the electoral district on the day of election.

3A. With respect to a member of Her Majesty's Canadian Forces, or of the Royal Canadian Mounted Police Force, stationed in the province, his wife or any of his dependents, any such person is qualified to vote at an election in the proper polling division of an electoral district who Concerning  
members of  
Her Majesty's  
Forces and  
the Royal  
Canadian  
Mounted  
Police Force.

- (a) is of the full age of eighteen years;
- (b) is a Canadian citizen or other British subject;
- (c) has been ordinarily resident in the province for one month immediately preceding the day of election;  
and
- (d) is ordinarily resident in the electoral district on the day of election,

and for the purposes of this section, notwithstanding the provisions of Section 10 or any of the other provisions of this Act,



## ELECTION ACT

- (e) a member of Her Majesty's Canadian Forces or of the Royal Canadian Mounted Police Force is deemed to be ordinarily resident in the province for one month immediately preceding the day of election if he was stationed as such member therein for that one month and is deemed to be ordinarily resident in the electoral district on the day of election if on that day he is stationed therein; and
- (f) a wife or dependent of a member referred to in paragraph (e) is deemed to be ordinarily resident in the province for one month immediately preceding the day of election if such person was occupying residential quarters in the same electoral district as such member for that one month and is deemed to be ordinarily resident in the electoral district on the day of election if on that day such person is occupying such residential quarters.

1971, No. 69, s. 2; 1974, No. 80, ss. 3 and 4.

### DISQUALIFICATION OF ELECTORS.

Certain persons disqualified from voting.

4. The following persons are disqualified from voting:
- (a) The chief electoral officer.
  - (b) The returning officer for each electoral district during his term of office, except when there is an equality of votes in the final addition of votes or on a recount.
  - (c) Judges of the Supreme Court.
  - (d) Every person held in custody under warrant of commitment in any penitentiary or gaol.
  - (e) Every person lawfully committed to an institution for the treatment of mental illness.

.....

Persons entitled to have names placed on lists of electors.

10. Every person who when the list of electors is being prepared or revised would be qualified to vote in the polling division where he resides if an election was held there at that time is entitled to have his name placed on the list of electors for that polling division in accordance with this Act.

.....

Appeal.

27.—(1) Any person who claims to be an elector may appeal from a decision of a Court of Revision relating to his right to have his name included in a list of electors.

ELECTION ACT

QUALIFICATIONS OF CANDIDATES.

43. Every person who

Qualifications  
of candidates.

- (a) is of the full age of eighteen years;
- (b) is a Canadian citizen or other British subject;
- (c) has been ordinarily resident in the province for six months immediately preceding nomination day; and
- (d) is not in any way disqualified by this or any other Act for election to or from sitting in the House of Assembly,

is qualified to be nominated as a candidate at any election, whether or not he is so qualified as an elector in the electoral district where he is nominated. 1971.No.69,s.5;1973, No.41,s.3;1974,No.80,s.11.

PROCEDURE AT NOMINATION.

44.—(1) Any two or more electors qualified to vote in an electoral district for which an election is to be held may nominate a candidate for the electoral district by signing a nomination paper as in Form No. 21 of the Schedule, stating therein the nominee's name, from which name may be omitted any but one of his given names or in which any but one of his given names may be indicated by initial only, ordinary place of residence and occupation and his address for service of process and papers under this Act, and by causing the nomination paper to be produced to and filed with the returning officer at any time between the date of the Proclamation issued under Section 33 and the close of nominations. 1974, No. 80, s. 12.

Nomination.

.....

(4) A nomination paper shall not be valid or acted upon by the returning officer, unless it is accompanied by

Conditions  
for nomination.

- (a) the consent in writing of the person therein nominated, except where such person is absent from the province when such absence shall be stated in the nomination paper;
- (b) an affidavit of the candidate as to his qualifications as in Form 23 of the Schedule; and
- (c) a deposit of one hundred dollars in legal tender or a cheque made payable to the Deputy Minister of Fin-

ELECTION ACT

ance for that amount drawn upon and accepted by a chartered bank.

.....

PERSONS NOT QUALIFIED TO ACT AS ELECTION OFFICERS.

Certain persons may not be appointed election officers.

58.—(1) Except a Judge acting under the powers specifically conferred on him by this Act, none of the following persons shall be appointed election officers:

- (a) Members of the Executive Council.
- (b) Members of the Parliament of Canada or of the House of Assembly.
- (c) Ministers, priests or ecclesiastics of any religious faith or worship.
- (d) Judges of the Supreme Court.
- (e) Persons who have served in the Parliament of Canada or in the House of Assembly in the session immediately preceding the election, or in the then present session of Parliament or of the House of Assembly, if the election takes place during that session.
- (f) Persons who have been found guilty by a competent tribunal of controverted elections or of any offence whatsoever under this Act.
- (g) Persons who are intending candidates.
- (h) Persons rendered ineligible for appointment under Section 113.

(2) A person shall not be appointed returning officer, unless he is qualified as an elector in an electoral district in the province.

(3) Except with the approval of the chief electoral officer, a person shall not be appointed deputy returning officer, election clerk or poll clerk, who is not qualified as an elector in the electoral district where he is to act.

(4) Any person who at any time within thirty days before an election,

- (a) is in the constant or permanent service of a candidate; or



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(b) is employed by any candidate or his agent or by any other person on behalf of or in the interest of a candidate in or about the election,

shall not be appointed deputy returning officer, election clerk, or poll clerk at that election.

**67.**—(1) Except as otherwise provided in and subject to his taking any oath required under this Act, a person qualified to vote at an election whose name appears on the official list of electors for a polling station shall on polling day be permitted to vote at such polling station, if he is then resident in the polling division for which that polling station has been established.

Who may vote.

.....

(7) An elector shall not vote in more than one electoral district nor more than once in any electoral district, but every elector may vote for as many candidates as are authorized by law to be elected for the electoral district in respect of which he votes.

Plural voting prohibited.

.....

SECRECY.

**70.**—(1) Every candidate, deputy returning officer, poll clerk, candidate's agent or other person in attendance at a polling station or at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and no candidate, deputy returning officer, poll clerk, candidate's agent or other person shall

Secrecy during and after poll.

- (a) at the polling station interfere with, or attempt to interfere with an elector when marking his ballot paper, or attempt to obtain information as to the candidate for whom any elector is about to vote or has voted;
- (b) at any time communicate any information as to the manner in which any ballot paper has been marked in his presence in the polling station;
- (c) at any time or place, directly or indirectly, induce or endeavour to induce any elector to show his ballot paper after he has marked it, so as to make known to any person the name of the candidate for whom he has so cast his vote;

(d) at any time communicate to any person any information

## ELECTION ACT

obtained at a polling station as to the candidate for whom any elector at that polling station is about to vote or has voted; or

- (e) at the counting of the votes attempt to obtain any information or communicate any information obtained at the counting as to the candidate for whom any vote is cast on any particular ballot paper.

Secrecy at poll.

(2) Subject to Section 71, an elector shall not,

- (a) upon entering the polling station and before receiving a ballot paper, openly declare for whom he intends to vote;
- (b) show his ballot paper, when marked, so as to allow the name of the candidate for whom he has voted to be known; or
- (c) before leaving the polling station openly declare for whom he has voted.

Offence.

(3) Every person who contravenes or fails to observe any provision of this section is guilty of an offence.

Procedure on violation.

(4) It shall be the duty of the deputy returning officer to draw the attention of any elector who has contravened the provisions of subsection (2) to the offence that he has committed and to the penalty to which he has rendered himself liable, but such elector shall nevertheless be allowed to vote in the usual way.

## TIME TO EMPLOYEES FOR VOTING.

Employees permitted three hours to vote.

**73.**—(1) Every employee who is a qualified elector shall, while the polls are open on polling day at an election, have three consecutive hours for the purpose of casting his vote, and if the hours of his employment do not allow for three consecutive hours, his employer shall allow him such additional time for voting as may be necessary to provide the three consecutive hours and no employer shall make any deduction from the pay of any such employee or impose upon or exact from him any penalty by reason of absence from his work during such consecutive hours, and the additional time for voting shall be granted at the convenience of the employer.

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(2) This section shall extend to railway companies and their employees, except employees actually engaged in the running of trains to whom such time cannot be allowed without interfering with the manning of the trains.

Railway companies.

(3) Any employer who refuses, or by intimidation, undue influence, or in any other way, interferes with the granting to any elector in his employ, of the consecutive hours for voting in this section provided, is guilty of an offence.

Offence.

.....

120.—

(4) Any person who during an election is guilty of an offence which is a corrupt practice or an illegal practice shall become disqualified from voting at such election, and he shall also in addition to any other punishment for such offence forfeit

Corrupt and illegal practices.

- (a) for every offence which is a corrupt practice the sum of two hundred dollars and costs; and

(b) for every offence which is an illegal practice, the sum of one hundred dollars and costs.

OFFICIAL AGENT AND ELECTION EXPENSES OF CANDIDATES.

121.—(1) Every candidate may appoint an official agent, and where an official agent is appointed the candidate shall as soon as he is appointed give notice to the returning officer of the name, address and occupation of his official agent.

Appointment of official agent.

(2) A candidate may himself undertake the duties which his official agent, if he had appointed one, might have undertaken.

Candidate may act as his own official agent.

(3) An election officer or his partner or clerk shall not be eligible to act as the official agent of a candidate at an election, and if any such person so acts he shall be guilty of an illegal practice and of an offence.

Election officers may not be official agents.

.....

(9) A detailed statement, verified by affidavit, of all election expenses incurred by or on behalf of any candidate shall within four months after the day of the declaration of the election, or where, by reason of the death of the creditor, no bill, charge or claim has been sent in within the period of four months, then within one month after the bill, charge or claim has been sent

Return of election expenses.



ELECTION ACT

in, be made out and signed by the candidate or his official agent, and delivered with the bills and vouchers relative thereto to the Minister.

.....

TRIAL OF CONTROVERTED ELECTIONS.

Petition.

122.—(1) A petition complaining of an undue return or undue election of a member, or of no return or double return, or of any unlawful act committed by any candidate not returned by which the candidate is alleged to have become disqualified to sit in the House of Assembly may be presented to the Supreme Court by

- (a) any person who had the right to vote at the election to which the petition relates;
- (b) any person who voted at the election;
- (c) a candidate at the election.

Proof of right to be a petitioner.

(2) The production of the official list of electors containing the names of the petitioner as set forth in the petition, or a copy certified by the Minister to be a true copy of the official list used at the election in the electoral district to which the petition relates shall be conclusive evidence that the petitioner could lawfully present the petition, and, if the petitioner was a candidate at such election, or if there is no list available, an affidavit by the petitioner that he was a candidate or an elector at the election, as the case may be, shall be conclusive evidence that the petitioner could lawfully present the petition.

Holding of plebiscites.

169.—(1) Whenever it appears to the Lieutenant-Governor in Council that an expression of opinion of the voters is desirable on any matter of public concern, the Lieutenant-Governor in Council may direct that a plebiscite be held to obtain that expression of opinion.

Application of this Act to plebiscites.

(2) The provisions of this Act relating to the holding of elections apply *mutatis mutandis* to plebiscites held under this Act except where the Lieutenant-Governor in Council by order directs otherwise in whole or in part. 1974, No. 80, s. 25.

## STATUTES AND REGULATIONS

### Introduction

Finally this chapter on the Newfoundland legislative power will comment on legislative sources dealing with the elaboration, publication and interpretation of statutes and regulations.

### STATUTES

A provincial statute has to be passed by the House of Assembly and assented to by the Lieutenant Governor to become law. The House of Assembly has to examine every bill following an orderly procedure comprising three readings. At the time of the second reading bills are often considered by committees of the Assembly. It should be noted that in order to encourage the drafting of uniform laws, Newfoundland appoints Commissioners for the promotion of uniformity of legislation in Canada.

Once assented to by the Lieutenant Governor, the statutes of Newfoundland have to be printed by the Queen's Printer as provided for by the Public Printing and Stationery Act, R.S.N. 1970, c. 316, s. 10 (see also Statutes Act, R.S.N. 1970, c. 362, as amended). According to the amended section 23 of the Evidence Act, judicial notice has to be taken of all acts of imperial and federal parliaments and provincial legislatures; its section 17 deals with the admissibility of evidence of proclamations, treaties and other acts of state of any foreign state, or any British colony, and its section 25 concerns proof of proclamations, orders and regulations. As to the continuing revisions and consolidations, they are regulated by the Statutes and Subordinate Legislation Act, S. N. 1977, c. 108, sections 4 to 9, as amended.

Newfoundland statutes have to be construed following the rules contained in the Interpretation Act, and other rules of construction not inconsistent with this Act.



## REGULATIONS

The Statutes and Subordinate Legislation Act (repealing the Regulations Act) provides for the filing, registration and publication of subordinate legislation, which term includes regulations, proclamations and other instruments defined in section 10(1)(e). Subordinate legislation shall be filed with the Registrar (Legislative Counsel) and published in the Newfoundland Gazette within one month of filing (section 12(1)). Unless otherwise specified, subordinate legislation that is not filed has no effect, and when filed it comes into force on the day it is published. A copy of any subordinate legislation filed has to be laid before the House of Assembly within sixty days after the filing. The production of a copy of any subordinate legislation printed by the Queen's Printer is prima facie proof of its filing and contents, and judicial notice shall be taken of such subordinate legislation (section 13; and Evidence Act, R.S.N. 1970, c. 115, s. 25).

Finally it should be mentioned that the rules of construction set forth in the Interpretation Act apply to Newfoundland regulations as well.

Legislative sources relating to the elaboration, publication and interpretation of statutes and regulations are as follows:

1. British North America Act.

Note: The provisions of its sections 53 to 57 concerning the elaboration of statutes applies mutatis mutandis to Newfoundland as specified in section 90. The B.N.A. Act does not contain any provision concerning the interpretation of statutes or regulations.

2. Interpretation Act, R.S.N. 1970, c. 182, as amended.

Note: This statute, reproduced below, applies to the interpretation of regulations as well as statutes, as stated in its section 3.

3. Statutes Act, R.S.N. 1970, c. 362, as amended.

Note: This statute, not reproduced here, deals with the assent and endorsement of statutes, their numbering, printing, binding and preservation.

4. Statutes and Subordinate Legislation Act, S.N. 1977, c. 108, as amended.

Note: This statute, repealing the Regulations Act, and not reproduced here, deals with the preparation and continuing revision of statutes, with subordinate legislation, and the Office of the Legislative Counsel.



5. Revised Statutes Act, 1970, S.N. 1970, No. 79, as amended.

Note: This statute, not reproduced here, deals with the elaboration, coming into force, publication, and interpretation of the revised statutes of 1970.

6. Evidence Act, R.S.N. 1970, c. 115, as amended.

Note: Section 23 deals with the judicial notice of imperial, federal and provincial statutes, and section 25 deals with proof of proclamations, orders and regulations.

7. Public Printing and Stationery Act, R.S.N. 1970, c. 316, as amended.

Note: Sections 10 to 12 deal with the printing and publication of statutes, regulations, other legal instruments, and the Newfoundland Gazette.

## LOIS ET RÈGLEMENTS

### Introduction

Ce chapitre sur le pouvoir législatif à Terre-Neuve se termine par une étude sur l'élaboration, la publication et l'interprétation des lois et règlements.

### Les lois

Aucune loi de cette province ne peut avoir d'existence juridique sans avoir été adoptée au préalable par l'Assemblée législative et sanctionnée par le lieutenant-gouverneur. L'Assemblée législative doit examiner tout projet de loi en suivant une procédure établie qui comporte trois lectures. Lors de la seconde lecture, les projets de loi sont souvent soumis à la considération de comités parlementaires. Il y a lieu de souligner que, dans le but de favoriser la rédaction de lois uniformes, Terre-Neuve nomme des commissaires affectés à la promotion de l'uniformisation des lois au Canada.

Une fois sanctionnées, les lois terre-neuviennes doivent être publiées par l'Imprimeur de la Reine en conformité de l'art. 10 du Public Printing and Stationary Act, R.S.N. 1970, c. 316 et des dispositions du Statutes Act, R.S.N. 1970, c. 362 et ses modifications. En vertu de l'art. 23 du Evidence Act, connaissance judiciaire doit être prise de toutes les lois impériales, fédérales et provinciales. L'art. 17 de cette même loi porte sur l'admissibilité en preuve des proclamations, traités et autres actes d'un état étranger, tandis que l'art. 25 traite de la preuve des proclamations, ordonnances et règlements. Le cas particulier des lois refondues est couvert par les art. 4 à 9 du Statutes and Subordinate Legislation Act, S.N. 1977, c. 108 et ses modifications et le Revised Statutes Act, 1970, S.N. 1970, no 79 et ses modifications.

Les lois de cette province doivent être interprétées suivant les règles énoncées dans l'Interpretation Act et suivant toute autre règle qui n'est pas incompatible avec cette loi.

### Les règlements

La loi intitulée Statutes and Subordinate Legislation Act traite du dépôt, de l'enregistrement et de la publication de la législation déléguée telle que définie à l'art. 10(1)(e). Suivant l'art. 12(1) de cette loi, la législation déléguée doit être déposée au bureau du registraire et publiée dans le

Newfoundland Gazette dans le mois qui suit la date de son dépôt. A moins d'indication au contraire, la législation déléguée ne peut avoir d'effet sans ce dépôt. Et à moins qu'une autre date n'ait été fixée, elle entre en vigueur le jour de sa publication. Copie de toute législation déléguée doit être déposée à l'Assemblée législative dans les soixante jours qui suivent son dépôt au bureau du registraire ou dans les quinze premiers jours de la nouvelle session, selon le cas. En vertu de l'art. 13 de la loi précitée et de l'art. 25 du Evidence Act (R.S.N. 1970, c. 115), la production d'un exemplaire de toute législation déléguée, publié par l'Imprimeur de la Reine, constitue une preuve prima facie de son dépôt et de son contenu et il doit être pris connaissance judiciaire de telle législation. Enfin, il y a lieu de rappeler que les règles d'interprétation énoncées dans l'Interpretation Act s'appliquent également aux règlements.

Les sources législatives sur l'élaboration, la publication et l'interprétation des lois et règlements de Terre-Neuve sont les suivantes:

1. A.A.N.B.

Note: Par application de l'art. 90 de cette loi impériale, ses art. 53 à 57 sur l'élaboration des lois s'appliquent mutatis mutandis à Terre-Neuve. L'A.A.N.B. ne renferme cependant aucune disposition sur l'interprétation des lois ou sur le pouvoir réglementaire.

2. Interpretation Act, R.S.N. 1970, c. 182 et ses modifications

Note: Cette loi reproduite ci-après touche tant l'interprétation des règlements que celle des lois conformément aux dispositions de son art. 3.

3. Statutes Act, R.S.N. 1970, c. 362 et ses modifications

Note: Cette loi, non reproduite ici, porte sur les inscriptions à faire sur les textes des lois sanctionnées, sur leur numérotation, leur impression, leur reliure et leur conservation.

4. Statutes and Subordinate Legislation Act, S.N. 1977, c. 108 et ses modifications

Note: Cette loi, qui abroge le Regulations Act et n'est pas reproduite ici, traite de la refonte permanente des lois et de l'élaboration et de la publication de la législation déléguée et crée le Bureau des conseillers légistes responsable de la rédaction et de refonte des lois.



5. Revised Statutes Act, 1970, S.N. 1970, no 79 et ses modifications

Note: Cette loi, non reproduite ici, traite de l'élaboration, de la mise en vigueur, de la publication et de l'interprétation des lois refondues de 1970.

6. Evidence Act, R.S.N. 1970, c. 115 et ses modifications

Note: L'art. 23 de cette loi porte sur la connaissance judiciaire des lois impériales, fédérales et provinciales, tandis que l'art. 25 traite de la preuve documentaire des proclamations, ordonnances et règlements.

7. Public Printing and Stationary Act, R.S.N. 1970, c. 316 et ses modifications

Note: Les art. 10 à 12 confient à l'Imprimeur de la Reine l'impression des recueils de lois et du Newfoundland Gazette qui contient les règlements, proclamations, ordonnances et divers avis.

# An Act Respecting the Interpretation of Statutes

R.S.N. 1970, c.182

with amendments to date, including 1979, c.39, s.8

et ses modifications à jour, y inclus 1979, c.39, s.8

1. This Act may be cited as The Interpretation Act. Short title
- 2.—(1) In this Act unless the context otherwise requires Interpretation.
  - (a) “public officer” includes any person in the public service of the province
    - (i) who is authorized to do or enforce the doing of any act or thing or to exercise any power, or
    - (ii) upon whom any duty is imposed

by or under a public statute;
  - (b) “regulation” includes any rule, rule of Court, order prescribing regulations, tariff of costs or fees, form, by-law, resolution, or order made in the execution of a power given by statute;
  - (c) “repeal” includes revoke or cancel.
- (2) For the purpose of this Act, an Act or a regulation that has expired or lapsed or otherwise ceased to have effect shall be deemed to be repealed. Expired Act deemed repealed.
- 3.—(1) This Act extends and applies to every Act and every regulation now or hereafter enacted or made, except in so far as any provision of this Act Application of Act.
  - (a) is inconsistent with the intent or object of the Act or regulation;

## INTERPRETATION ACT

(b) would give to any word, expression, or clause of the Act or regulation an interpretation inconsistent with the context or the interpretation section of the Act or regulation; or

(c) is by the Act or regulation declared not applicable thereto.

(2) The omission in any Act of a declaration that this Act applies thereto shall not be construed to prevent it so applying, although such express declaration may be inserted in some other Act or Acts of the same session.

(3) Nothing in this Act excludes the application to any Act of any rule of construction applicable thereto and not inconsistent with this Act.

(4) Where an Act or regulation contains an interpretation section or provision, it shall be read and construed as subject to the same exceptions as those contained in subsection (1).

Act applies  
to itself.

4. The provisions of this Act apply to the interpretation of this Act.

Acts to be  
deemed public.

5.—(1) Every Act shall, unless by express provision it is declared to be a private Act, be deemed to be a public Act and may be declared on and given in evidence without being specially pleaded.

Proclamations  
to be judicially  
noted.

(2) Every proclamation shall be judicially noticed by all judges, magistrates, justices, and others, without being specially pleaded.

Publication in  
Gazette to be  
evidence.

6. Printed copies of Acts and regulations made thereunder published in *The Newfoundland Gazette* or purporting to be printed by the Queen's Printer for Newfoundland or by any other person appointed by the Lieutenant-Governor in Council are evidence of such Acts and regulations.

Interpretation  
of references  
to Governor  
in Commission  
and to certain  
Ministers and  
other officers.

7. Wherever in any Act or regulation or order made under the authority thereof, or in any proclamation, order in council or order in commission, or in any contract, lease, document or writing of any kind whatsoever, there is mentioned or referred to



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- (a) the Governor in Council or the Governor in Commission, there shall in each and every case be substituted the Lieutenant-Governor in Council;
- (b) the Minister of Finance and Customs, the Commissioner for Finance or the Secretary for Finance, there shall in each and every case be substituted the Minister of Finance and the Deputy Minister of Finance, respectively;
- (c) in matters other than those relating to fisheries and co-operatives
  - (i) the Department of Agriculture and Mines, the Department of Marine and Fisheries, the Department of Lands and Fisheries, there shall in each and every case be substituted the Department of Mines, Agriculture and Resources,
  - (ii) the Minister of Agriculture and Mines, the Minister of Marine and Fisheries, the Minister of Lands and Fisheries, the Commissioner for Natural Resources, there shall in each and every case be substituted the Minister of Mines, Agriculture and Resources,
  - (iii) the Deputy Minister of Agriculture and Mines, the Deputy Minister of Marine and Fisheries, the Deputy Minister of Lands, the Deputy Minister of Fisheries, the Deputy Minister of Agriculture, the Secretary for Natural Resources, there shall in each and every case be substituted the Deputy Minister of Mines, Agriculture and Resources;
- (d) the Commissioner for Supply or the Secretary for Supply, there shall in each and every case be substituted the Minister of Supply and the Deputy Minister of Supply, respectively;
- (e) in matters relating to education and the Department of Education, the Commissioner for Home Affairs and Education and the Secretary for Education, there shall in each and every case be substituted the Minister of Education and the Deputy Minister of Education, respectively;

## INTERPRETATION ACT

- (f) in matters relating to labour and the Department of Labour, the Commissioner for Public Health and Welfare or the Commissioner for Public Utilities, there shall in each and every case be substituted the Minister of Labour;
- (g) the Secretary of the Commission of Government, there shall in each and every case be substituted the Clerk of the Executive Council.

Date of  
operation.

8. Where any Act or any order in council, order in commission, order, warrant, scheme, letters patent, rule, regulation or by-law made, granted or issued under a power conferred by any Act is expressed to come into operation on a particular day or on a date fixed by proclamation or otherwise, it shall be construed as coming into operation immediately on the expiration of the previous day, and where it is expressed to expire, lapse or otherwise cease to have effect on a particular day it shall be construed as ceasing to have effect immediately on the commencement of the following day.

Powers ex-  
ercisable under  
Act not  
coming into  
force on  
assent.

9. Where an Act or any provision of the Act is not to come into force immediately on its being passed and confers power to

- (a) make appointments;
- (b) hold elections;
- (c) make regulations;
- (d) make, grant, or issue instruments;
- (e) give notices;
- (f) prescribe forms; or
- (g) do any other thing,

that power may, for the purpose of making the Act or provision effective at the date of its coming into force, be exercised at any time after the passing of the Act, subject to the restriction that a regulation made under the power shall not, unless the contrary is necessary for making the Act or provision effective from

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its commencement, come into force until the Act or provision comes into force.

10. Where any Bill is introduced in any session of the Legislature for the continuance of any Act that would expire in that session, and the Act expires before the Bill for continuing the same receives the assent of the Lieutenant-Governor, the continuing Act shall be deemed and taken to have effect from the date of the expiration of the Act intended to be continued, as fully and effectually, to all intents and purposes, as if the continuing Act had actually passed before the expiration of the Act intended to be continued, unless it is otherwise especially provided in the continuing Act; but nothing herein contained shall extend, or be construed to extend, to affect any person with any punishment, penalty or forfeiture whatsoever, by reason of anything done or omitted to be done by such person contrary to the provisions of the Act so continued, between the expiration of the same and the date on which the continuing Act receives the assent of the Lieutenant-Governor.

Effect of continuing Act passed after expiration of Act intended to be continued.

RULES OF CONSTRUCTION.

11. The law shall be considered as always speaking and whenever any matter or thing is expressed in the present tense the provision shall be applied to the circumstances as they arise so that effect may be given to each Act and every part thereof according to its true spirit, intent, and meaning.

Statue law always speaking.

12.—(1) The words “now”, “next”, “heretofore” and “hereafter” shall be interpreted as having reference to the time when the Act or the part or provision of the Act containing the words or any of them came into force.

Interpretation of “now”, “next”, “heretofore” and “hereafter”.

(2) The word “shall” shall be construed as imperative and the word “may” as permissive and empowering.

Interpretation of “may” and “shall”.

(3) The word “herein” used in a section or provision of an Act or regulation relates to the whole Act or regulation and not to that section or provision only.

Interpretation of “herein”.

13. No provision in any Act passed after the 11th day of May, 1951, is binding on Her Majesty or affects Her Majesty or Her

Provisions affecting Crown.



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Majesty's rights or prerogatives in any manner unless it is expressly stated therein that Her Majesty is bound thereby.

Scope of  
private Acts.

14. Where an Act is of the nature of a private Act no provision of the Act affects the rights of any person save only as mentioned or referred to in the Act.

Preamble.

15. The preamble of an Act shall be deemed a part of the Act intended to assist in explaining the purport and object of the Act.

Marginal  
notes and  
headings.

16. The marginal notes and headings in the body of an Act and the reference to former enactments do not form part of the Act and shall be deemed to be inserted for convenience of reference only.

Liberal  
construction.

17. Every Act and every regulation and every provision of an Act or regulation shall be deemed remedial and shall receive such fair, large, and liberal construction and interpretation as best ensures the attainment of the objects of the Act, regulation, or provision according to its true intent, meaning and spirit.

Words in  
regulations,  
etc.,  
interpreted  
with Act.

18. Where an Act confers power to make regulations or to grant, make, or issue any order in council, proclamation, order, writ, warrant, scheme, or letters patent, expressions used in them have the same respective meanings as in the Act conferring the power.

Proclamation  
to be  
understood  
as issued  
under  
authority  
of order  
in council.

19. Where the Lieutenant-Governor is authorized to do an act by proclamation, the proclamation means a proclamation issued pursuant to an order of the Lieutenant-Governor in Council but it is not necessary to mention in the proclamation that it is issued under such an order.

Powers  
vested in  
corporations.

20. Words in an Act establishing a corporation

(a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal and to alter or change it at pleasure, to have perpetual succession, to acquire and hold property for the purposes for which the corporation is constituted and to alienate all or part of such property at pleasure;

(b) vest in a majority of the members of the corporation the power to bind the others by their acts; and

## INTERPRETATION ACT

- (c) exempt from personal liability for its debts, obligations, or acts the individual members of the corporation who do not contravene the provisions of the Act incorporating them.

**21.** Every public officer and functionary now or hereafter appointed by or under the authority of an Act or otherwise shall remain in office during pleasure only, unless it is otherwise expressed in the Act or in his commission or appointment.

Officials  
appointed  
during  
pleasure.

**22.—(1)** Words authorizing the appointment of a public officer or functionary include the power of

Implied power  
to remove  
officials  
and fix  
remuneration.

- (a) removing or suspending him;
- (b) reappointing or reinstating him;
- (c) appointing another in his stead or to act in his stead;  
and
- (d) fixing his remuneration and varying or terminating it,

in the discretion of the authority in whom power of appointment is vested.

(2) Words directing or empowering a public officer or functionary to do any act or thing, or otherwise applying to him by his name of office, include his successor in the office and his or their deputy.

Implied power  
of successors  
in office.

(3) Words directing or empowering a minister of the Crown to do any act or thing, or otherwise applying to him by his name of office, include a minister acting for him or, if the office is vacant, a minister designated to act in the office by or under the authority of an order in council, and also his successors in the office and his or their deputy.

Implied  
power of  
deputy or  
successor  
to minister.

(4) Where by any Act or regulation the signature of a minister is required to a document the document may be signed or countersigned, as the case may be,

Idem.

- (a) by a minister acting for or, if the office is vacant, in the place of the minister, or
- (b) by his lawful deputy

with the same force and effect as if signed by the minister.

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Power of  
official  
to be  
exercised  
by holder  
of office.

(5) Where a power is conferred or a duty imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the person for the time being charged with the execution of the powers and duties of the office. 1979, c.5, s.1.

Implied  
provisions.

### 23. In an Act or regulation

- (a) where anything is directed to be done by or before a public officer, a magistrate or a justice of the peace, it shall be done by or before one whose jurisdiction or power extends to the place where such thing is to be done;
- (b) where power is given to the Lieutenant-Governor in Council or a public officer to do or enforce the doing of any act or thing, all such powers shall be deemed to be also given as are necessary to enable him to do or enforce the doing of the act or thing;
- (c) where any act or thing is required to be done by more than two persons, a majority may do it;
- (d) where a power is conferred or a duty imposed, the power may be exercised and the duty shall be performed from time to time as occasion requires;
- (e) where power is conferred to make regulations, the power shall be construed as including power, exercisable in like manner and subject to like consent and conditions, if any, to rescind, revoke, amend, or vary the regulations and to make others;
- (f) where a form is prescribed, deviations from the form not affecting the substance nor calculated to mislead, do not invalidate the form used;
- (g) words importing the masculine gender include the female gender and words importing the female gender include the masculine gender and words importing either gender may include corporations and other words of neuter gender.
- (h) words in the singular include the plural and words in the plural include the singular;
- (i) where a word is defined, other parts of speech and tenses of the same word have corresponding meanings;



## INTERPRETATION ACT

- (j) where the time limited for the doing of anything expires or falls upon a holiday, the time so limited shall be extended to and the thing may be done on the day first following which is not a holiday;
- (k) where a number of days not expressed to be “clear days” is prescribed the days shall be reckoned exclusively of the first day and inclusively of the last and where the days are expressed to be “clear days” or where the term “at least” is used both the first day and the last shall be excluded;
- (l) where in any Act the future tense or words implying futurity are used, and there are already existing appointments or facts corresponding with what is provided for by the future tense or the words implying futurity, the appointments and facts shall be held to be intended by and to satisfy the requirements of the Act until new appointments or other proceedings are necessary;
- (m) when bonds are required to be given by a public officer, they shall, unless otherwise stated, be taken in the name of Her Majesty. 1979, c. 39, s. 8.

23A.(1) Where a board, commission or other body (in this section called a “board”), is constituted under an Act, a majority of a board is a quorum and the chairman of the board has an equal vote with the other members.

Quorum.

(2) A vacancy in the membership of a board does not invalidate the constitution of a board or impair the right of the members in office to act, if the number of members in office is not less than a quorum. 1975-76, No. 57, s. 4.

Vacancy  
in board.

23B. Where in any Act any person, board, commission or other body is given the powers that are or may be conferred on a commissioner under *The Public Enquiries Act*, or those powers are conferred thereon by any form of words in an Act, *The Public Enquiries Act* applies in respect of any enquiry, investigation or hearing carried out by that person, board, commission or body in like manner and with like effect as though that enquiry, investigation or hearing were an enquiry held by commissioners appointed under *The Public Enquiries Act* and vested with all the powers that can be conferred upon commissioners under that Act. 1977, c. 46, s. 6.

Powers  
under  
Public  
Enquiries  
Act

## INTERPRETATION ACT

## REFERENCES.

Citation of  
Act includes  
amendment.

**24.** A citation of or reference to an Act of Newfoundland or to a regulation made thereunder or of any other province or territory of Canada or of Canada shall be deemed to be a citation of or reference to the Act or regulation as amended whether the amendment was made before or after the passing of the Act or regulation in which the citation or reference is made.

Reference  
to sections,  
etc., as  
printed.

**25.—(1)** Reference by number or letter to any section, subsection, paragraph, subparagraph, clause, subclause or line of another Act shall be deemed to be a reference to the section, subsection, paragraph, subparagraph, clause, subclause, or line of the other Act as printed by authority of law.

Citation  
of sections  
by number  
to be in-  
clusive.

**(2)** Where reference is made by number or letter to two or more parts, divisions, sections, subsections, paragraphs, subparagraphs, clauses, subclauses, schedules or forms in an Act or regulation, the number or letter first mentioned and the number or letter last mentioned shall both be deemed to be included in the reference.

Reference  
in Act to  
parts of  
the Act.

**(3)** Where in an Act or regulation reference is made to a part, division, section, schedule, or form and there is nothing in the context to indicate that a part, division, section, schedule or form of some other Act is intended to be referred to, the reference shall be deemed to be a reference to a part, division, section, schedule, or form of the Act or regulation in which the reference is made.

Reference  
in section.

**(4)** Where in a section of an Act or regulation reference is made to a subsection, paragraph, subparagraph, clause, or subclause and there is nothing in the context to indicate that a subsection, paragraph, subparagraph, clause or subclause of some other section is intended to be referred to, the reference shall be deemed to be a reference to a subsection, paragraph, subparagraph, clause or subclause of the section in which the reference is made.

Construction  
of references  
in Acts to  
regulations.

**(5)** Where in an Act reference is made to regulations and there is nothing in the context to indicate that regulations made under some other Act are intended to be referred to, the reference shall be deemed to be a reference to regulations made under the Act in which the reference is made.

Definitions,

**26.—(1)** In an Act or regulation the expression

## INTERPRETATION ACT

- (a) "Act" or "statute" means an Act or statute of the Legislature of Newfoundland;
- (b) "Assembly" means the House of Assembly of the province;
- (c) "bank" or "chartered bank" means a bank to which the *Bank Act* (Canada) applies, and includes a branch, agency, and office of a bank;
- (d) "cattle" includes any horse, mule, ass, swine, sheep or goat as well as any neat cattle or animal of the bovine species and by whatever technical or familiar name known, and applies to one animal as well as to many;
- (dA) "Court of Appeal" means the Appeal Division of the Supreme Court referred to in paragraph (a) of subsection (1) of Section 5 of The Judiciary Act;
- (e) "Criminal Code" means the *Criminal Code of Canada* and the Acts already passed and any Acts hereafter passed amending the *Criminal Code*;
- (f) "folio" means one hundred words, every figure being deemed to be one word;
- (g) "Gazette" means *The Newfoundland Gazette*;
- (h) "goods" means personal property;
- (i) "Governor General" means the Governor General of Canada or other chief executive officer or administrator carrying on the Government of Canada on behalf and in the name of the Sovereign, by whatever title he is designated;
- (j) "Governor General in Council" means the Governor General or person administering the Government of Canada, acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Queen's Privy Council for Canada;
- (k) "grantor" includes every person from whom any freehold estate or interest passes by instrument in writing and "grantee" includes every person to whom any such estate or interest passes in like manner;



## INTERPRETATION ACT

- (l) "Great Seal" means the Great Seal of Newfoundland;
- (m) "Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;
- (n) "holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Victoria (Empire) Day, the birthday or the day appointed for the celebration of the birth of the reigning Sovereign, Labour Day, Remembrance Day, Armistice Day, Christmas Day, and any day appointed by an Act of the Parliament of Canada or by proclamation of the Governor General or of the Lieutenant-Governor for a general fast or thanksgiving or as Arbor Day for the planting of forests or other trees or a public holiday, and whenever a holiday falls on a Sunday the expression "holiday" includes the following day;
- (o) "justice" means a justice of the peace and includes two or more justices if two or more justices act or have jurisdiction;
- (p) "Legislature" means the Lieutenant-Governor acting by and with the advice and consent of the House of Assembly of the province;
- (q) "Lieutenant-Governor" means the Lieutenant-Governor of the province or other chief executive officer or administrator carrying on the government of Newfoundland on behalf and in the name of the Sovereign, by whatever title he is designated;
- (r) "Lieutenant-Governor in Council" means the Lieutenant-Governor or person administering the Government of Newfoundland acting by and with the advice of, or by and with the advice and consent of, or in conjunction with the Executive Council of Newfoundland;
- (s) Repealed.
- (t) "month" means a calendar month;

## INTERPRETATION ACT

- (u) "Newfoundland", or "the Island", or "this Island", or "Colony", or "the Colony", or "this Colony" means, unless the context otherwise requires, the Province of Newfoundland;
- (v) "oath" or "affidavit" in the case of persons for the time being allowed or required by law to affirm or declare instead of to swear includes affirmation and declaration and "swear" in the like case includes "affirm" and "declare";
- (w) "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person;
- (x) "proclamation" means a proclamation under the Great Seal;
- (y) "province" means the Province of Newfoundland except when used in reference to a part of Canada other than the Province of Newfoundland in which case "province" includes the Yukon Territory and the Northwest Territories;
- y.01) "Provincial Court judge" means a Provincial Court judge appointed under The Provincial Court Act, 1974 and includes the Chief Provincial Court judge;
- (y.1) "registered mail" includes certified mail;
- (z) "representatives" means executors and administrators;
- (aa) "security" means sufficient security;
- (bb) "Supreme Court" means the Supreme Court of Newfoundland, and, when the subject or context requires, the Court of Appeal or the Trial Division referred to in Section 5 of The Judiciary Act;
- (cc) "surety" means a sufficient surety;
- (ccA) "Trial Division" means the Trial Division of the Supreme Court referred to in paragraph (b) of subsection (1) of Section 5 of The Judiciary Act;

INTERPRETATION ACT

- (dd) "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland;
- (ee) "United States" means the United States of America;
- (ff) "warrant" means warrant under hand and seal;
- (gg) "will" includes codicil;
- (hh) "writing", "written" or any term of like import includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any mode of representing or reproducing words in a visible form;
- (ii) "year" means a calendar year.

Names commonly used.

(2) In an Act or regulation a name commonly applied to any country, place, body, corporation, society, officer, functionary, person, party, or thing means the country, place, body, corporation, society, officer, functionary, person, party, or thing to which the name is commonly applied although the name is not the formal or extended designation thereof. 1974, No. 38, s. 2; 1974, No. 77, s. 36; 1975-76, No. 57, s. 4; 1979, c. 5, s. 2; 1979, c. 38, s. 6.

REPEAL AND AMENDMENT.

Power of repeal reserved.

27.—(1) An Act shall be construed as reserving to the Legislature the power of repealing or amending it and revoking, restricting, or modifying any power, privilege, or advantage thereby vested in or granted to a person.

Amendment at same session.

(2) An Act may be amended or repealed by an Act passed in the same session.

Amendment one with Act.

(3) An amending Act, so far as consistent with the tenor of the Act, shall be construed as part of the Act which it amends.

Effect of repeal.

28.—(1) Where an Act or enactment is repealed in whole or in part or a regulation is revoked in whole or in part the repeal or revocation shall not

- (a) revive any Act, enactment, regulation, or thing not in force or existing at the time at which the repeal or revocation takes place;



## INTERPRETATION ACT

- (b) affect the previous operation of any Act, enactment, or regulation so repealed or revoked or anything duly done or suffered thereunder;
- (c) affect any right, privilege, obligation, or liability acquired, accrued, accruing or incurred under the Act, enactment, or regulation repealed or revoked;
- (d) affect any offence committed against or any violation of the provisions of the Act, enactment, or regulation repealed or revoked, or any penalty, forfeiture, or punishment incurred in respect thereof;
- (e) affect any investigation, legal proceedings, or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture, or punishment,

and the investigation, legal proceedings, or remedy may be instituted, continued, or enforced and the penalty, forfeiture, or punishment imposed as if the Act, enactment, or regulation had not been repealed or revoked.

(2) Where an Act or enactment is repealed in whole or in part or a regulation is revoked in whole or in part and other provisions are substituted therefor

Effect of  
repeal and  
substitution.

- (a) every person acting under the Act, enactment, or regulation repealed or revoked shall continue to act as if appointed under the provisions so substituted until another is appointed in his stead;
- (b) every bond and security given by any person appointed under the Act, enactment or regulation repealed or revoked shall remain in force, and all offices, books, papers and things made or used under the repealed or revoked Act, enactment, or regulation shall continue as before the repeal or revocation so far as consistent with the substituted provisions;
- (c) every proceeding taken under the Act, enactment, or regulation repealed or revoked shall be taken up and continued under and in conformity with the provisions substituted, so far as it consistently may be;
- (d) in the recovery or enforcement of penalties and forfeitures incurred and in the enforcement of rights ex-

## INTERPRETATION ACT

isting or accruing under the Act, enactment, or regulations repealed or revoked or in any proceedings in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adapted;

- (e) if any penalty, forfeiture, or punishment is reduced or mitigated by any of the provisions substituted, the penalty, forfeiture, or punishment, if imposed or adjudged after the repeal or revocation, shall be reduced or mitigated accordingly.

Repeal and substitution affecting regulations and references.

**29.—**(1) Where an Act or enactment is repealed in whole or in part and other provisions are substituted by way of amendment, revision, or consolidation

- (a) all regulations made under the repealed Act or enactment shall remain in force in so far as they are not inconsistent with the substituted Act or enactment until they are annulled or others made in their stead; and
- (b) a reference in an unrepealed Act or enactment or in a regulation made thereunder to the repealed Act or enactment, shall, as regards a subsequent transaction, matter or thing, be construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject matter, as the repealed Act or enactment, and, if there are no provisions in the substituted Act or enactment relating to the same subject matter, the repealed Act or enactment shall stand good and be read and construed as unrepealed, but only so far as is necessary to maintain or give effect to the unrepealed Act, enactment, or regulation.

References where Act replaced.

(2) Where an Act or enactment of any other province or territory of Canada or of Canada is repealed in whole or in part and other provisions are substituted by way of amendment, revision, or consolidation, a reference in an Act or enactment of Newfoundland or in a regulation made thereunder to the repealed enactment shall, as regards a subsequent transaction, matter, or thing be construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject matter as the repealed Act or enactment.



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**30.—**(1) The repeal of an Act or enactment in whole or in part shall not be deemed to be or to involve a declaration that the Act or enactment was or was considered by the Legislature to have been previously in force.

Repeal does not imply any Act in force.

(2) The amendment of an Act or enactment shall not be deemed to be or to involve a declaration that the law under the Act or enactment was or was considered by the Legislature to have been different from the law as it is under the Act or enactment as amended.

Amendment does not imply a change in the law.

(3) The repeal of an Act or enactment in whole or in part or the amendment of an Act or enactment shall not be deemed to be or to involve any declaration as to the previous state of the law.

Repeal or amendment does not declare previous law.

(4) The Legislature shall not, by re-enacting an Act or enactment, or by revising, consolidating or amending an Act or enactment, be deemed to have adopted the construction which has by judicial decision or otherwise been placed upon the language used in the Act or enactment, or upon similar language.

Re-enactment, etc., not deemed to adopt judicial decision.

**31.** Whenever a part of an Act is repealed and any provision substituted therefor is incorporated in the Act, the substituted provision shall, unless the contrary is expressly declared, take effect from the date of the commencement of the repealing Act.

When substituted provision takes effect.

## APPLICATION OF PENALTIES.

**32.** Any penalty, fine or sum of money or the proceeds of any forfeiture under any law of the province shall, if no other provision is made respecting it, belong to the Crown for the use of the province and form part of the Consolidated Revenue Fund.

Application of fines, etc.

## MISCELLANEOUS.

**33.** Where by an Act or by an order, regulation, or commission made or issued by the Lieutenant-Governor or Lieutenant-Governor in Council under any law authorizing him to require the taking of evidence under oath, an oath is authorized or directed to be made, taken or administered, the oath may be administered and a certificate of its having been made, taken or administered may be given by any one named in the Act, order, regulation, or commission or by a judge of any court, a notary public, magistrate, justice of the peace or a commissioner of the Supreme Court having authority or jurisdiction in the place where the oath is administered.

Administration of oaths.



INTERPRETATION ACT

Effect of  
imposition  
of penalty.

**34.** The imposition of a penalty does not relieve any person from liability to answer for damages to the person injured.

Offences under  
two or  
more Acts.

**35.** Where an act or omission constitutes an offence under two or more Acts, the offender is, unless the contrary intention appears, liable to be prosecuted and punished under either or any of those Acts but is not liable to be punished twice for the same offence.

JUDICIAL POWER



POUVOIR JUDICIAIRE





## JUDICIAL POWER

### Introduction

According to sections 92(14) and 101 of the British North America Act, the judicial power in Newfoundland is made up of federal as well as provincial courts, with the latter subdivided into courts whose judges are appointed by the federal government and those whose judges are appointed by the province. These federal as well as provincial courts are as follows:

- A. Federal courts:
  - 1. Supreme Court of Canada
  - 2. Federal Court of Canada (Trial and Appeal Divisions)

Note: Statutes creating these two courts are reproduced in part in volume 2 of this collection, pp. G11, and subs.
- B. Provincial courts:
  - a) Whose judges are appointed federally:
    - 1. Supreme Court of Newfoundland:
      - a. Court of Appeal
      - b. Trial Division
      - c. Unified Family Court
    - 2. District Court
  - b) Whose judges are appointed provincially:
    - 1. Provincial Court of Newfoundland

Statutes creating each of the provincial courts mentioned above are reproduced in part below. Also reproduced in part are the Judicature Act, which is the constitutive act of the Supreme Court of Newfoundland, the Family Court Act, and the Small Claims Act, which contain provisions concerning the jurisdiction of the Provincial Court in specified matters.

In addition to these statutes, the Federal Courts Jurisdiction Act, reproduced in the chapter above under "General Constitutional Acts", should also be consulted. The federal Judges Act, reproduced in part in volume 2 of this collection, pp. G47 and subs., applies to provincial judges of Newfoundland who are nominated by the federal government. The status of judges appointed provincially is specified in provincial statutes creating these courts.

More information regarding the judicial power in general, the unitary and integrated character of the Canadian judicial structure, the principle of independence of the judiciary, and the role played by judges in Canada, can be found in volume 2 of this collection, pp. G5 to G7.

Selected references:

- Read, Horace E., and Barker, John M., The Judicial Systems of the Common Law Provinces and Federal Courts of Canada, Halifax, Dalhousie Law School, 1963? See the chapter on "The Courts of Newfoundland."
- Debicki, M., "Courts," in Bellamy, David J., and others, The Provincial Political Systems, op. cit., pp. 369-380.
- Gall, Gerald L., The Canadian Legal System (Toronto, Carswell, 1977), pp. 96-106 (Ch. 6. Hierarchy of Federal and Provincial Courts and Division of Responsibility).
- Waddams, S.M., Introduction to the Study of Law (Toronto, Carswell, 1979), pp. 157-169 (Ch. 10. The Structure of the Courts).

## POUVOIR JUDICIAIRE

### Introduction

En vertu des art. 92(14) et 101 de l'A.A.N.B., le pouvoir judiciaire terre-neuvien se compose à la fois de tribunaux fédéraux et de tribunaux provinciaux. Les tribunaux provinciaux se subdivisent à leur tour en tribunaux dont les juges sont nommés par l'état fédéral et en tribunaux dont les juges sont nommés par la province. Ces tribunaux, tant fédéraux que provinciaux sont les suivants:

#### A. Tribunaux fédéraux:

1. Cour suprême du Canada
2. Cour fédérale du Canada

Note: Les lois constitutives de ces deux cours sont partiellement reproduites aux pages G12 et suivantes du volume 2 de cette collection.

#### B. Tribunaux provinciaux:

- a) Tribunaux provinciaux dont les juges sont nommés par l'état fédéral:
  1. "Supreme Court of Newfoundland":
    - a. "Court of Appeal"
    - b. "Trial Division"
    - c. "Unified Family Court"
  2. "District Court"
- b) Tribunaux provinciaux dont les juges sont nommés par la province:
  1. "Provincial Court of Newfoundland".

Des extraits de la loi constitutive de chaque tribunal provincial mentionné plus haut sont reproduits ci-après. Il en est ainsi du Judicature Act qui sert de loi constitutive à la Cour suprême de Terre-Neuve et des lois intitulées Family Court Act et Small Claims Act qui consacrent la compétence de la Cour provinciale sur les matières qu'elles couvrent respectivement.

Outre les lois reproduites dans ce chapitre, il y a lieu de consulter celle intitulée Federal Courts Jurisdiction Act et reproduite au chapitre "Lois constitutionnelles générales" du présent fascicule. La Loi sur les juges adoptée par le législateur fédéral et reproduite partiellement aux pages G48 et suivantes du volume 2 de cette collection s'applique aussi aux juges des tribunaux terre-neuviens nommés par l'état fédéral. Par ailleurs, le statut des juges des tribunaux terre-neuviens nommés par la province même est précisé dans les lois provinciales constitutives de ces tribunaux.

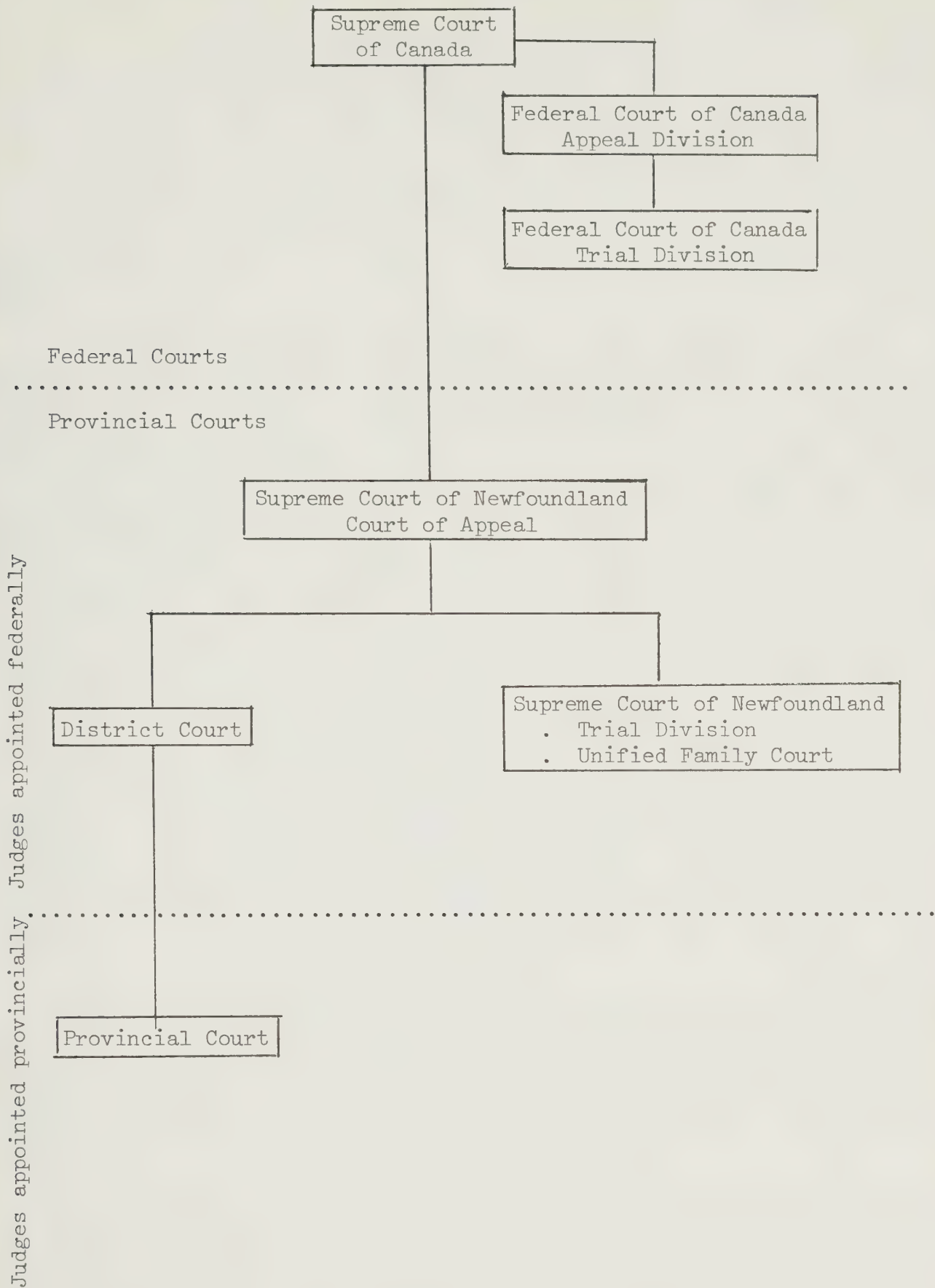


De plus amples renseignements sur l'ensemble du pouvoir judiciaire, sur le caractère unitaire et intégré de la hiérarchie judiciaire et sur l'indépendance et le rôle des juges au Canada, sont contenus aux pages G8 et suivantes du volume 2 de cette collection.

#### Sources choisies

- Read, Horace E. et Barker, John M., The Judicial Systems of the Common Law Provinces and Federal Courts of Canada, Halifax, Dalhousie Law School, 1963? Consulter le chapitre "The Courts of Newfoundland".
- Debicki, M. "Courts" dans David J. Bellamy et al, The Provincial Political Essays; Comparative Essays, Toronto, Methuen, 1976, pp. 369-380.
- Gall, Gerald L., The Canadian Legal System, Toronto, Carswell, 1977, 316 p. Consulter le chapitre 6 "Hierarchy of Federal and Provincial Courts and Division of Responsibility", pp. 96-106.
- Waddams, S.M., Introduction to the Study of Law, Toronto, Carswell, 1979, 270 p. Consulter le chapitre 10 "The Structure of the Courts", pp. 157-169.

The Judicial System of Newfoundland







## JUDICATURE ACT

R.S.N. 1970, c. 187

with amendments to date, including 1980, c. 41, s. 40

Note:

This statute continues the operation of the Supreme Court of Newfoundland, a superior court of record, having civil and criminal jurisdiction. This court, first established temporarily in 1792 and then permanently in 1824 (5 Geo. 4, c. 67), has undergone a number of reorganizations. In 1974 the Supreme Court of Newfoundland was divided into two divisions: the Appeal Division, called the Court of Appeal, and the Trial Division. In 1977, another division of the Supreme Court was created known as the Unified Family Court, with judges of the Trial Division sitting in this Court. This has been established as a pilot project for a period of three years, from the coming into force of its constitutive act (June 18, 1979). The Supreme Court of Newfoundland is composed of eight judges: the Chief Justice of Newfoundland, the Chief Justice of the Trial Division, two judges of Appeal, and four judges of the Trial Division, all appointed federally by the Governor General in Council. Their status is governed by a federal statute, the Judges Act (R.S.C. 1970, c. J-1), reproduced in volume 2 of this collection, pp. G47, and subs.

The Court of Appeal consists of three judges: the Chief Justice of Newfoundland and two other judges. It has appellate jurisdiction from other courts in the province in criminal and civil matters. Appeals from its decision lie to the Supreme Court of Canada, the general court of last resort for the whole of Canada.

The Trial Division consists of five judges: the Chief Justice of the Trial Division and four other judges. It has jurisdiction in the first instance in civil and criminal matters, including divorce and matrimonial actions, and probate. It hears appeals from various administrative and quasi-judicial tribunals, and appeals from its decisions lie to the Court of Appeal.

The Unified Family Court, as a division of the Supreme Court, consists of judges of the Trial Division of the Supreme Court, with one of them presiding. It has jurisdiction in the first instance in family matters within the judicial area of St. John's.

The Judicature Act comprises 264 sections, and attached schedules, and only provisions having constitutional law interest are reproduced below.

## JUDICATURE ACT

R.S.N. 1970, c. 187

et ses modifications à jour, y inclus  
1980, c. 41, s. 40

Note:

Cette loi régit les activités de la Cour suprême de Terre-Neuve ("Supreme Court of Newfoundland"). Cette cour supérieure d'archives, qui a compétence en matière civile et criminelle, a d'abord été établie de façon provisoire en 1792, puis en permanence en 1824 (5 Geo. 4, c. 67). Après avoir subi diverses transformations, ce tribunal fut constitué en deux divisions en 1974: la division d'appel, connue sous le nom de Cour d'appel, et la division de première instance. Une autre division de la Cour suprême, désignée sous l'appellation "Unified Family Court", a été établie en 1977. Cette dernière division, composée des juges de la division de première instance, a été mise sur pied à titre expérimental pour une période de trois ans commençant le jour de l'entrée en vigueur de sa loi constitutive, soit le 18 juin 1979. La Cour suprême de Terre-Neuve se compose de huit juges, soit du juge en chef de Terre-Neuve, du juge en chef de la division de première instance, de deux juges de la Cour d'appel et de quatre juges de la division de première instance, tous nommés par l'état fédéral et soumis à la loi fédérale intitulée Loi sur les juges (S.R.C. 1970, c. J-1), reproduite en partie aux pages G48 et suivantes du volume 2 de cette collection.

Trois juges siègent à la Cour d'appel, soit le juge en chef et deux autres juges. Cette cour constitue le tribunal d'appel de Terre-Neuve en matière civile et criminelle. Ses décisions peuvent faire l'objet d'un appel à la Cour suprême du Canada, le tribunal général d'appel de dernier ressort pour l'ensemble du Canada.

La division de première instance comprend cinq juges, soit le juge en chef de cette division et quatre autres juges. Elle exerce une compétence de première instance en matière civile et criminelle, y compris en matière de divorce, de causes matrimoniales et de successions. Elle peut, en outre, entendre l'appel des décisions rendues par certains



tribunaux administratifs et quasi-judiciaires. Ses jugements peuvent alors être portés en appel devant la Cour d'appel de Terre-Neuve.

En tant que division de la Cour suprême de Terre-Neuve, le tribunal désigné sous le nom de "Unified Family Court" se compose des juges de la division de première instance de cette cour et est présidé par l'un d'entre eux. Ce tribunal exerce sa compétence de première instance en droit de la famille dans le seul district judiciaire de St-Jean.

La présente loi renferme 264 articles et des annexes. Seules les dispositions présentant un intérêt en droit constitutionnel sont reproduites ici.

An Act Respecting the Supreme Court and Procedure therein

1. This Act may be cited as The Judicature Act. Short title.

.....

JURISDICTION, CONSTITUTION AND POWERS OF THE COURT  
AND THE JUDGES THEREOF.

4. The Supreme Court of Newfoundland shall have all civil and criminal jurisdiction whatsoever, conferred by the Imperial statute passed in the fifth year of the reign of His late Majesty King George the Fourth, entitled "An Act for the better administration of justice in Newfoundland, and for other purposes", and by the Royal Charter or Letters Patent under the Great Seal, issued by virtue of the said statute, dated the nineteenth day of September, in the sixth year of His said Majesty's reign, and by any law in force in this province. Jurisdiction of  
Supreme Court.

5.—(1) The Supreme Court of Newfoundland shall be composed of Composition  
of the  
Supreme Court.

(a) an Appeal Division, to be called the Court of Appeal, with, subject to Section 7A, original and appellate jurisdiction; and

(b) a Trial Division, with original jurisdiction in

(i) criminal proceedings, and

(ii) civil causes and matters,

and with such appellate jurisdiction to the single judges thereof as was, immediately before the date of the coming into force of this Section 5, given to single judges of the Supreme Court of Newfoundland as it was constituted immediately before that date or as may on or after that date be given to single judges of the Trial Division.

(2) Subject to subsection (4), the Court of Appeal shall consist of three judges, being Idem.

(a) a chief justice, who shall be styled Chief Justice of Newfoundland, and

## JUDICATURE ACT

(b) two other judges, who shall be styled Judges of Appeal,  
and shall sit in St. John's.

Idem.

(3) Subject to subsection (4), the Trial Division shall consist of five judges, being

(a) a chief justice, who shall be styled Chief Justice of the Trial Division, and

(b) four other judges, who shall be styled Judges of the Trial Division.

Supernumerary judges.

(4) The Supreme Court shall also have for each of the seven judges referred to in subsections (2) and (3) the additional office of supernumerary judge of the Supreme Court, which office shall be filled in accordance with the provisions of the *Judges Act* (Canada), and any judge appointed to that office shall be called Judge of Appeal or Judge of the Trial Division, depending upon the Division to which he is appointed.

Powers of judges.

(5) Subject to this Act, included among the privileges, powers and authorities which the judges referred to in subsections (2), (3) and (4) shall have and exercise in the province are, save as they have been heretofore amended, altered or added to or as they may hereafter be amended, altered or added to, the like privileges, powers and authorities as are prescribed by the Act, Royal Charter and laws referred to in Section 4, subject, however, to the same being appropriate to the duties of the Court of Appeal or the Trial Division, as the case may be.

Vacancy not to impair powers of Court.

(6) The Supreme Court and either of its Divisions shall be deemed to be duly constituted even though the office of any judge may be vacant or unfilled.

Intent.

(7) The intent of this section is not to derogate from the privileges, powers and authorities of the Supreme Court as they existed immediately before the date of the coming into force of this Section 5 but to divide the jurisdiction of the Court between the Court of Appeal and the Trial Division without any loss in the aggregate of such privileges, powers and authorities, and this Section 5 and all the other provisions of this Act shall be interpreted in the light of this expressed intent.



JUDICATURE ACT

5A. The Chief Justice of Newfoundland has rank and precedence over all other judges of the courts of Newfoundland, the Chief Justice of the Trial Division has rank and precedence next after the Chief Justice of Newfoundland, and the other judges of the Court of Appeal and of the Trial Division have rank and precedence among themselves according to their seniority of appointment.

Precedence of judges in Newfoundland.

.....

5C.(1) A District Court judge under *The District Court Act, 1976* is a local judge of the Trial Division and subject to subsection (3), has the jurisdiction, powers and authority, and may perform the functions now belonging to or exercised by a judge of the Trial Division.

Local judges of the Trial Division.

(2) In exercising the jurisdiction, powers and authority and performing the function of a judge of the Trial Division, mentioned in subsection (3), a District Court judge shall be known and styled as a "local judge of the Trial Division of the Supreme Court of Newfoundland".

How styled.

(3) The jurisdiction of a local judge of the Trial Division of the Supreme Court of Newfoundland extends only to the exercising of such powers and authority and the performing of, such functions and the transacting of such business as may be exercised, performed or transacted by a judge of the Trial Division under

Jurisdiction.

- (a) this Act or any statute or law in force in the province in respect of any cause or matter relating to the grant or revocation of letters of probate or letters of administration; or
- (b) *the Divorce Act* (Canada).

OATHS.

5D.--(1) The Chief Justice of Newfoundland, the Chief Justice of the Trial Division and every other judge of the Supreme Court shall, before entering upon the duties of his office, take and subscribe

Oaths.

- (a) the Oath of Allegiance, and

JUDICATURE ACT

(b) the Judicial Oath

referred to in The Oaths of Office Act.

Administration  
of oaths.

(2) The oaths referred to in subsection (1) shall be administered by a judge of the Court. 1974, No. 57, s. 3; 1975-76, No. 69, s. 61; 1977, c. 88, s. 21.

REFERENCES TO SUPREME COURT.

Reference to  
Supreme Court.

6.—(1) The Lieutenant-Governor in Council may refer to the Court of Appeal any matter which he thinks fit to refer and the Court shall thereupon hear and consider the matter.

Court to certify  
opinion.

(2) The Court shall certify to the Lieutenant-Governor in Council its opinion on the matter referred, with the reasons therefor which are to be given in like manner as in the case of a judgment in an ordinary action, and any judge who differs from the opinion of the majority shall in like manner certify his opinion and his reasons.

Notice to  
Attorney  
General of  
Canada.

(3) Where the matter relates to the constitutional validity of any Act of the Legislature or of any provision in any such Act, the Attorney General of Canada shall be notified of the hearing in order that he may be heard if he sees fit.

Reference  
under  
agreement.

(4) Where the matter relates to questions arising under any Agreement entered into between the Government of Canada and the Government of the Province of Newfoundland which provides for a reference to the Supreme Court to hear, consider, and determine the questions so arising, the Attorney General of Canada and the Attorney General of any other province which has entered into an agreement of a like nature and having like purposes to that Agreement is entitled to appear before the Court of Appeal and be heard as a party to any proceedings consequent upon the reference.

Appeal.

(8) The opinion of the Court upon any reference under this section shall be deemed a judgment of the Court and an appeal lies therefrom as from a judgment in an action. 1974, No. 57, s. 4.

.....

Judge of  
Supreme Court.

7. A judge of the Court of Appeal or of the Trial Division

.....

JUDICATURE ACT

- (a) is a judge of the Supreme Court, and
- (b) is *ex officio* a judge of the Division of the Court of which he is not a member,

and except where it is otherwise expressly provided all the judges of the Supreme Court have in all respects equal jurisdiction, power and authority. 1974, No. 57, s. 5.

7A.—(1) The Court of Appeal shall, subject to subsection (5), consist of the Chief Justice of Newfoundland and the two other Judges of Appeal and shall, subject to this Act, hear and determine motions for new trials, motions in arrest of judgment, rehearings, appeals and special cases, and all other matters, that before the date of the coming into force of this Section 7A have been or could have been heard and determined by the Supreme Court, sitting as a court of appeal, or that are proper to be heard and determined by a Supreme Court of record *en banc*.

Jurisdiction of Court of Appeal.

(2) The Court of Appeal shall have and exercise appellate jurisdiction, with such original jurisdiction as may be necessary or incident to the determining of any appeal, and has all the jurisdiction and powers possessed by the Supreme Court of Newfoundland, sitting as a court of appeal, immediately before the date of the coming into force of this Section 7A, with appellate jurisdiction in all criminal proceedings and civil causes and matters, and jurisdiction and power to hear and determine motions and appeals respecting any judgment, order or decision of a judge of the Trial Division.

Idem.

(3) Notwithstanding any of the provisions of this Act, any cause or matter which, upon the coming into force of this Section 7A, comes within the jurisdiction of the Court of Appeal shall, if the hearing has been commenced before the date of the coming into force of this section, continue and conclude as if this section had not been enacted and the jurisdiction of the Supreme Court, sitting as a court of appeal, as it was before the date of the coming into force of this Section 7A shall for such purposes be deemed to be unimpaired by the enactment of this section as respects any such cause or matter and all consequences shall follow as if this section had not been enacted.

Respecting causes or matters where hearing commenced before coming into force of this section.

(4) No judge shall sit on the hearing of an appeal from any judgment or order made by him or on the hearing of

When judge not to sit on appeal.



## JUDICATURE ACT

a motion for a new trial in any cause or matter tried before him with or without a jury.

When judge of  
Trial Division  
to sit in Court  
of Appeal.

(5) In any cause or matter in which a judge of the Court of Appeal is unable to sit or take part in consequence of the provisions of subsection (4), or of illness or of any other cause or in case of a vacancy in that Court, the Chief Justice of Newfoundland or, in case of his illness or absence or in the case of a vacancy in the office of Chief Justice of Newfoundland, the senior judge of the Court of Appeal may request the Chief Justice of the Trial Division or, in case of his illness or absence or in case of a vacancy in the office of Chief Justice of the Trial Division, the senior judge of the Trial Division to summon and the Chief Justice of the Trial Division or the senior Judge, as the case may be, shall summon one of the judges of the Trial Division to sit and act in the place of such judge or in the place of any judge whose office has become vacant, and it is the duty of the judge so summoned to attend and while so sitting and acting he has all the jurisdiction, power and authority which such other judge would have had. 1974, No. 57, s. 5.

.....

Jurisdiction of  
Trial Division.

7B.—(1) Notwithstanding anything in this Act or any other Act or law or Rules of Court, the Trial Division, subject to Section 7A, shall have and exercise jurisdiction over

- (a) all criminal proceedings and civil causes and matters pending in the Supreme Court at the date of the coming into force of this Section 7B; and
- (b) all criminal proceedings and civil causes and matters which were within the exclusive cognizance of the Supreme Court in the exercise of its original jurisdiction immediately before the date of the coming into force of this Section 7B.

Proceedings to  
be before a  
single judge  
of Trial Division  
when  
practicable.

(2) Every cause and matter in the Trial Division and all proceedings arising out of the same shall so far as is practicable and convenient be heard, determined and disposed of before a single judge, and all proceedings in an action subsequent to the hearing or trial and down to and including the final judgment or order, always excepting any proceedings on appeal or by motion for a new trial or the like, shall so far as is practicable and convenient be had and taken before the judge before whom the trial or hearing of the cause took place.

JUDICATURE ACT

(3) When it may conveniently be done the judges of the Trial Division may sit apart and separately from the other or others, at the same time, for the trial and determination of any cause or matter which may be heard and determined by one or more judges, as the case may be; and the rising or adjournment of any one or more judges shall not affect the sitting of the other or others.

Judges of Trial Division may sit apart.

(4) Any judge of the Trial Division may, subject to Rules of Court, exercise in that Division in court or Chambers all or any part of the jurisdiction by this Act vested in the Court, in all such causes and matters and in all such proceedings in any causes and matters as, before the date of the coming into force of this Section 7B, might have been heard in court or Chambers by a single judge, or as may be directed or authorized to be so heard by Rules of Court to be hereafter made, and in such cases any judge sitting in court shall be deemed to constitute the Court.

Judge of Trial Division may exercise jurisdiction of Court.

(5) At the request of the Chief Justice of the Trial Division or, in case of his illness or absence or in the case of a vacancy in the office of Chief Justice of the Trial Division, of the senior judge of the Trial Division, the Chief Justice of Newfoundland or, in case of his illness or absence or in case of a vacancy in the office of Chief Justice of Newfoundland, the senior judge of the Court of Appeal may sit and act or summon another judge of the Court of Appeal to sit and act as a judge of the Trial Division, and it is the duty of any judge so summoned to attend and while so sitting and acting a judge of the Court of Appeal shall have all the jurisdiction, power and authority of a judge of the Trial Division. 1974, No. 57, s. 5.

When judge of Appeal Division to sit in Trial Division.

.....





## UNIFIED FAMILY COURT ACT

S.N. 1977, c. 88

with amendments to date, including 1979, c. 14

Note:

This statute regulates the operation of the Unified Family Court, as a division of the Supreme Court of Newfoundland. It has been established as a pilot project for a period of three years from June 18, 1979. It has jurisdiction in the first instance in matters of divorce and matrimonial causes, and juvenile delinquency (section 7), but only in the judicial area of St. John's, as described in the Schedule of this act. It suspends the operation and effect of the Family Courts Act in relation to this judicial area (section 11). It consists of judges of the Trial Division of the Supreme Court, with one of them presiding.

The Unified Family Court Act contains 23 sections and a schedule, and only provisions having constitutional law interest are reproduced below.

UNIFIED FAMILY COURT ACT

S.N. 1977, c. 88

et ses modifications à jour, y inclus 1979, c. 14

Note:

Cette loi régit les activités de la "Unified Family Court", une division de la Cour suprême de Terre-Neuve. Cette cour a été constituée à titre expérimental pour une période de trois ans commençant le 18 juin 1979. Elle exerce une compétence de première instance en matière de divorce, de causes matrimoniales et de délinquance juvénile (art. 7) dans le seul district judiciaire de St-Jean tel que délimité dans l'annexe de sa loi constitutive. Ce sont les juges de la division de première instance de la Cour suprême qui siègent à ce tribunal et le président.

La présente loi contient 23 articles et une annexe. Seules les dispositions d'intérêt constitutionnel sont reproduites ci-après.

AN ACT RESPECTING THE CREATION OF A  
UNIFIED FAMILY COURT.

Be it enacted by the Lieutenant-Governor and House of  
Assembly in Legislative Session convened, as follows:

SHORT TITLE

1. This Act may be cited as *The Unified Family Court Act*,  
and shall be read with *The Judicature Act*. Short  
title

INTERPRETATION

2. In this Act, Definitions

(a) "judicial area" means the area set out in the  
Schedule; and

(b) "proceeding" includes any action, cause, matter, petit-  
ion or application. 1979, c.14, s.1.

PURPOSE OF ACT

3. The purpose of this Act is to establish as a pilot project  
a special court with comprehensive unified jurisdiction over  
family matters that has in addition to its adjudicative role, a  
preventative or therapeutic function involving the constructive  
task of maintaining the family unit as an entity in cases where  
this is possible, or where this cannot be done, of providing  
humane and constructive solutions. Purpose  
of Act

UNIFIED FAMILY COURT

4. There is hereby established a division of the Supreme  
Court of Newfoundland to be known as the Unified Family  
Court. Unified  
Family  
Court  
established

5.(1) The Chief Justice of the Trial Division Judge  
shall appoint a judge of the Trial Division to be  
presiding judge of the Unified Family Court for the  
period this Act is in force, and the presiding judge  
shall take and sign the following oath of office  
before commencing his duties:  
"I do swear that I will truly and faithfully  
execute the duties, powers and trusts of a judge  
presiding over the Unified Family Court to the best  
of my skill and knowledge. So help me God."



*An Act Respecting The Creation Of A  
Unified Family Court*

(2) Every judge of the Trial Division is a judge of the Unified Family Court but no such judge, other than the presiding judge of the Unified Family Court, may preside over the Unified Family Court except on the request of the Chief Justice of the Trial Division. 1979, c.14, s.2.

JURISDICTION OF UNIFIED FAMILY COURT

Territorial  
jurisdiction

**6.(1)** The Unified Family Court shall hold sittings in premises located within the judicial area.

(2) Without limiting the prerogatives vested in the Crown, nothing in any Act of the Province, or any rules, orders, regulations or by-laws made under or by virtue of such Act shall prevent or be construed to prevent the use of any property within the judicial area, the title to which is vested in Her Majesty, for the purpose of the Unified Family Court. 1979, c.14, s.3.

Jurisdiction  
of court

**7.(1)** The Unified Family Court has and may exercise all the powers and duties possessed by the Supreme Court of Newfoundland in relation to, and has and may exercise exclusive jurisdiction in relation to, all proceedings in the following matters taken in the judicial area, other than by way of appeal;

- (a) formation of marriage;
- (b) dissolution and annulment of marriage;
- (c) judicial separation and separation orders;
- (d) actions and causes concerning matrimonial property including injunctions, partition and settlements;
- (e) restitution of conjugal rights;
- (f) relief for family dependants on death;
- (g) declarations of status including validity of marriage, legitimacy and legitimation;
- (h) alimony and maintenance (interspousal) including protection orders for deserted spouses;
- (i) maintenance of children including affiliation proceedings and agreements;
- (j) enforcement of alimony and maintenance orders including reciprocal enforcements of these orders;
- (k) custody and access;

*An Act Respecting The Creation Of A  
Unified Family Court*

- (l) adoption;
  - (m) charges or proceedings under the Criminal Code or any statute of the province relating to non-support or interspousal assaults, to school attendance, and to neglected children;
  - (n) juvenile delinquency including charges or proceedings under the Criminal Code in relation thereof;
  - (o) guardianship of the person and property;
  - (p) interspousal and familial torts; and
  - (q) such other matters as are provided by or under any Act to be within the jurisdiction of the Unified Family Court.
- (2) The Unified Family Court has and may exercise jurisdiction as *parens patriae*.
- (3) The jurisdiction of the Unified Family Court may be exercised by a judge of the Unified Family Court.
- (4) Paragraph (n) of subsection (1) comes into force on a date fixed by proclamation.
- (5) The jurisdiction of the Trial Division of the Supreme Court, the District Court and every court of summary jurisdiction is suspended by this Act in relation to proceedings in which the Unified Family Court has exclusive jurisdiction.
- (6) All proceedings described in subsection (1) commenced after the coming into force of this Act shall be commenced and styled in the Unified Family Court but any such proceeding commenced before the coming into force of this Act may be continued as if this Act were not in force.
- (7) For the purposes of sections 245(1), 245(2)(b), 666 and 746 of the Criminal Code, the judge of the Unified Family Court has all the powers of a magistrate under the Criminal Code. 1979,c.14,s.4.

9. Where a proceeding is commenced in the Unified Family Court in a matter over which jurisdiction may be exercised in the Unified Family Court and it is combined with a matter within the jurisdiction of a judge of the Supreme Court of New-

Jurisdiction  
of court  
may be  
extended

*An Act Respecting The Creation Of A  
Unified Family Court*

foundland but over which jurisdiction may not be exercised in the Unified Family Court, the Unified Family Court may, with the consent of the parties, determine and dispose of the combined matters.

.....

Operation  
of RSN  
1970 c.122

11. The operation and effect of *The Family Courts Act* in relation to the judicial area is suspended.

.....

UNIFIED FAMILY COURT COMMITTEE

Unified  
Family  
Court  
Committee

19.(1) There is hereby established a Unified Family Court Committee for the purpose of monitoring the Unified Family Court and making recommendations to the Attorney-General of the province with respect to the operation and functioning of that court.

(2) The Unified Family Court Committee shall consist of not more than ten and not less than five members appointed by the Minister of Justice with the approval of the Lieutenant-Governor in Council and five of those members shall be:

- (a) one member of the Law Society of Newfoundland;
- (b) one representative of the Department of Justice of the Government of the province;
- (c) one representative of the Department of Social Services of the Government of the province; and
- (d) two representatives of the public.

CROWN MAY BE BOUND

Court order  
binds Crown

20. In relation to any order or judgment issued by the Unified Family Court Her Majesty in right of the province is bound.

.....

REPEAL OF ACT

Repeal  
of Act

23. This Act with the exception of section 21 expires on the day three years from the coming into force of this Act, or on such earlier day as may be fixed by proclamation, unless before



*An Act Respecting The Creation Of A  
Unified Family Court*

the earlier of such days, the House of Assembly, by resolution directs that this Act shall continue in force until a day specified in the resolution, in which case this Act expires either on that specified day or on such earlier day as may be fixed by proclamation.

Note: Sections 1, 3 and 6 of this Act are deemed to have come into force on June 18, 1979.  
1979, c. 14, s. 8.

## DISTRICT COURT ACT, 1976

S.N. 1975-76, No. 69

with amendments to date, including 1980, c. 24, s. 6

Note:

This statute regulates the operation of the District Court of Newfoundland. The province has been divided into seven judicial districts, with a District Court in each district. This statute amalgamates these courts into the District Court of Newfoundland as a court of law and record with jurisdiction throughout the province. Its jurisdiction is concurrent with that of the Trial Division of the Supreme Court. Its original jurisdiction is described in section 4, while section 55 provides that judges of the District Court have powers to try any person charged with a criminal offense who elects to be tried by a judge without a jury. The District Court consists of eight judges: the Chief Judge and seven other judges, all appointed federally by the Governor in Council. Their status is governed by a federal statute, the Judges Act (R.S.C. 1970, c. J-1), reproduced in volume 2 of this collection, pp. G47, and subs. The District Court hears appeals from the Provincial Court, and appeals from its decisions lie to the Court of Appeal.

The District Court Act of 1976 comprises 64 sections, and only provisions having constitutional law interest are reproduced below.

## DISTRICT COURT ACT, 1976

S.N. 1975-76, no 69

et ses modifications à jour, y inclus  
1980, c. 24, art. 6

Note:

Cette loi régit le fonctionnement de la Cour de district de Terre-Neuve ("District Court"). Il y a une cour de district dans chacun des sept districts judiciaires de la province. Cette cour est un tribunal statutaire et une cour d'archives qui a juridiction dans toute la province. Elle exerce une juridiction concurrente avec la division de première instance de la Cour suprême. Sa compétence originale est définie à l'art. 4 de la présente loi, tandis que l'art. 55 lui confère le pouvoir d'entendre la cause de tout prévenu accusé d'un acte criminel qui choisit d'être jugé par un juge sans jury. Ce tribunal se compose de huit juges, dont un juge en chef et sept autres juges, tous nommés par l'état fédéral et soumis à l'application de la loi fédérale intitulée Loi sur les juges et reproduite aux pages G48 et suivantes du volume 2 de cette collection. La Cour de district peut entendre l'appel de certaines décisions rendues par la Cour provinciale ("Provincial Court"). En vertu des art. 41 et 42 de sa loi constitutive, ses décisions peuvent faire l'objet d'un appel à la Cour d'appel de Terre-Neuve.

Des 64 articles de la présente loi, seules sont reproduites les dispositions d'intérêt constitutionnel.



AN ACT TO REPEAL AND REPLACE THE  
DISTRICT COURTS ACT.

*Be it enacted by the Lieutenant-Governor and House of  
Assembly in Legislative Session convened, as follows:*

SHORT TITLE

Short  
title.

1. This Act may be cited as *The District Court Act, 1976*.

THE DISTRICT COURT OF NEWFOUNDLAND

District  
Court  
established.

3.(1) The courts of law now existing for each of the seven judicial districts under the style of the "District Court of the Judicial District of (name of district)" are amalgamated and continued as a court of law and record styled the District Court of Newfoundland with jurisdiction, as set out in this Act, throughout Newfoundland.

Concurrent  
jurisdiction.

(2) The jurisdiction conferred on the District Court of Newfoundland by this Act is concurrent with that of the Trial Division of the Supreme Court of Newfoundland and this Act does not affect the jurisdiction conferred by any law on any other court.

JURISDICTION OF THE COURT

Original  
jurisdiction.

4. The District Court has original jurisdiction in the following actions, namely:

- (a) personal actions in contract or tort;
- (b) actions of debt or penalty arising by statute;
- (c) actions for the recovery of personal property, including actions of replevin and detinue;
- (d) actions in relation to land or a legal or equitable estate therein, including, without limiting the generality of the foregoing, actions in which title to land is brought into question and actions for the recovery of land;
- (e) actions for an accounting;
- (f) actions involving the validity of a settlement;
- (g) actions seeking equitable relief;

District Court Act

- (h) actions for a declaratory judgment; and
- (i) generally, in all actions that can be made the subject of a claim for relief whether legal or equitable, or to enforce a right whether legal or equitable.

5. Subject to the provisions of *The Judicature Act* relating to the assignment of choses in action, the District Court has jurisdiction in actions brought by assignees of choses in action.

Actions by assignees.

6. Writs of *certiorari* may not issue from the District Court and proceedings in the nature of *certiorari* may not be taken therein.

Certiorari not to issue from court.

CONSTITUTION OF THE COURT

THE JUDGES

7.(1) The District Court of Newfoundland shall consist of a chief judge, to be styled the Chief Judge of the District Court, and eight other judges.

Composition of court.

(2) For each office of judge established under subsection (1), there is an additional office of supernumerary judge, which any judge of the District Court may elect to hold upon compliance with the *Judges Act* (Canada) and upon meeting the qualifications required under that Act. 1980, c.15, s.1.

Supernumerary judges.

8.(1) The Chief Judge of the District Court shall reside in or within ten miles of the City of St. John's.

Residence.

(2) Each of the offices of District Court shall be allocated to a judicial centre by order of the Lieutenant-Governor in Council and a District Court judge shall reside in the judicial centre to which his judicial office is assigned or within the area served by the judicial centre.

Residence in judicial centre.

9. No person during the continuance of his appointment as a judge or supernumerary judge of the District Court shall directly or indirectly practise in the profession of law.

Prohibition.

10. A District Court judge shall, before entering upon the duties of his office, take the following oath before a judge of the Trial Division or the Chief Judge, as the case may require:

Oath of judge.

"I, ....., do swear

District Court Act

that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second Her Heirs and Successors in the office of Chief Judge of the District Court of Newfoundland or a Judge of the District Court of Newfoundland and I will do right to all manner of people after the laws and usages applying in Newfoundland without fear or favour, affection or ill will. So help me God."

**Ex officio functions.** 11. Each District Court judge is *ex officio* a stipendiary magistrate and justice of the peace.

.....

**Supreme court judges.** 13.(1) Any or all of the judges of the Trial Division shall, upon the request of the Lieutenant-Governor in Council, perform the duties devolving by any law upon the judges of the District Court.

**Powers of judges.** (2) When acting under subsection (1), a judge of the Trial Division has and may use, exercise and enjoy all the powers, authority and functions that by law are conferred or devolve upon judges of the District Court.

.....

ANNUAL JUDGES CONFERENCE

**Annual meeting of judges.** 21.(1) In June of each year the Chief judge shall hold a conference of District Court judges at a time and place designated by him or failing his designation by the Minister of Justice.

.....

**Power of Supreme Court judges.** 40. Nothing in this or any other Act affects or abridges the power, authority and jurisdiction possessed by the judges of the Supreme Court (which power, authority and jurisdiction each of them is hereby invested and declared to have) to preside in the District Court, and to dispose of the business in the District Court, as fully and effectually as could be done by a District Court judge.

**Appeal to Supreme Court.** 41.(1) Any party to a matter may appeal to the Court of Appeal from any judgment directed to be entered at or after the trial or from a refusal to enter the judgment.

**Motion for new trial.** (2) Where a party does not appear at the trial a motion for a new trial may be made before the District Court judge who presided at the trial but in any other case a motion for a new



*District Court Act*

trial shall be made before the Court of Appeal.

**42.**(1) An appeal lies to the Court of Appeal at the instance of any party to a matter from

Appeals.

- (a) every decision or order of a District Court judge in court or chambers under any of the powers conferred upon him by any rules of court or by any statute, unless provision is therein made to the contrary;
- (b) every decision or order in any matter disposing of any right or claim;
- (c) any decision or order of a District Court judge, whether pronounced or made at the trial or on appeal from taxation or otherwise, that has the effect of depriving the plaintiff of court costs on the ground that his action is of the proper competence of a magistrate or of entitling him to court costs on the ground that the action is not of the proper competence of a magistrate.

(2) This section does not apply to an order or decision that is merely interlocutory and is not final in its nature.

Exception.

.....

**DISTRICT COURT JUDGE'S CRIMINAL COURT**

**55.**(1) Each District Court judge is constituted a court of record for the trial of any person charged with an offence for which he may be tried by a judge without a jury and for which the person so charged elects to be tried by a judge without a jury, and the court so constituted and judge thereof has and shall exercise the powers and perform the duties mentioned in those provisions of the *Criminal Code* that relate to trials of indictable offences by a judge without a jury.

District  
Court  
Judge's  
Criminal  
Court.

(2) The court constituted under subsection (1) shall be called the District Court Judge's Criminal Court at (naming the judicial centre).

Title of  
court.

.....

## PROVINCIAL COURT ACT

S.N. 1974, No. 77

with amendments to date, including 1979, c. 38

Note:

This statute regulates the operation of the Provincial Court of Newfoundland. It is a court of record with both civil and criminal jurisdiction throughout the province as specified in section 5. It includes juvenile and family cases as specified in section 6 of the Family Courts Act, reproduced below, with the exception of the judicial area of St. John's, which falls under the jurisdiction of the Unified Family Court, as a Division of the Supreme Court of Newfoundland. See also the Small Claims Act, S. N. 1979, c. 34, reproduced below. The Provincial Court is established in principal points in the province. Appeals from the Provincial Court lie to the District Court. The Provincial Court is composed of a Chief Judge and other judges (formerly magistrates), appointed provincially by the Lieutenant Governor in Council. This act elaborates on the status of judges, their appointment and reappointment, powers, functions and duties, tenure and removal from office, retirement and pension rights. See also the Retirement of Magistrate Act, S.N. 1975-76, No. 55.

The Provincial Court Act contains 37 sections, and only provisions of constitutional law interest are reproduced below.

## PROVINCIAL COURT ACT

S.N. 1974, no 77

et ses modifications à jour, y inclus 1979, c. 38

Note:

La Cour provinciale ("Provincial Court of Newfoundland") est un tribunal d'archives qui, selon l'art. 5 de la présente loi, a compétence en matière civile et criminelle dans toute la province. Sa compétence matérielle englobe les questions relatives à la famille et à la jeunesse précisées à l'art. 6 du Family Courts Act reproduit ci-après, sauf dans le district judiciaire de St-Jean où cette compétence est exercée à titre expérimental par la "Unified Family Court" en tant que division de la Cour suprême de Terre-Neuve. En vertu du Small Claims Act reproduit ci-après, elle a également compétence en matière de petites créances. Il y a appel à la Cour de district de certaines de ses décisions rendues notamment en matière de petites créances et de déclarations sommaires de culpabilité. Les juges de la Cour provinciale, y compris le juge en chef de cette cour, sont nommés par le lieutenant-gouverneur en conseil. Leur statut, leur nomination, leurs pouvoirs, fonctions et devoirs sont régis par la présente loi qui crée également un conseil provincial de la magistrature et en détermine les fonctions. La présente loi est complétée par le Retirement of Magistrate Act, S.N. 1975-76, no 65, non reproduit ici.

Des 37 articles de la présente loi, seules les dispositions qui présentent un intérêt en droit constitutionnel sont reproduits ici.



# AN ACT RESPECTING A PROVINCIAL COURT.

*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:*

## SHORT TITLE.

Short title. 1. This Act may be cited as The Provincial Court Act, 1974.

.....

## PROVINCIAL COURT.

Provincial Court. 4.—(1) There shall be, for the province, a court of record, to be styled “The Provincial Court of Newfoundland”.

Composition of Court. (2) The Court shall be composed of such Magistrates\*as may be appointed under Section 7 and such Magistrates\*as exist by virtue of Section 15.

Court may be held before any Magistrate.\* (3) The Court may be held before any one of the Magistrates\* for the time being.

Jurisdiction. 5.—(1) The Court and every Magistrate\*of the Court has jurisdiction throughout the province and every Magistrate \*

(a) shall exercise all the powers and perform all the duties conferred or imposed upon a magistrate\*by or under any Act of the Legislature or of the Parliament of Canada;

(b) subject to The Welfare of Children Act, Chapter 190 of The Revised Statutes of Newfoundland, 1970 and The Family Courts Act, Chapter 122 of The Revised Statutes of Newfoundland, 1970, has all the power and authority now vested by or under any Act of the Legislature in a magistrate; two justices of the peace sitting together or a juvenile or family court or a judge thereof;

(c) may exercise all the powers and perform all the duties conferred or imposed upon a magistrate\*or one or more justices of the peace under any Act of the Parliament of Canada; and

(d) is *ex officio* a justice of the peace.

Idem. (2) Every Magistrate\*shall be deemed to have been specially authorized by the terms of his appointment to exercise the juris-

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\* Now Provincial Court Judge(s).1979,c.38,s.1.

*Provincial Court Act*

diction conferred upon a magistrate\*under Part XVI of the *Criminal Code* (Canada) but this subsection does not apply to any number of justices of the peace.

6. Subject to Sections 11 and 12, the Court may hold sittings at any place throughout the province as may be convenient for the orderly dispatch of the business of the Court, or at any place designated by the Minister.

Sittings of Court.

APPOINTMENT OF MAGISTRATES.\*

7.—(1) The Lieutenant-Governor in Council may, upon the recommendation of the Minister, appoint, by Commission under the Great Seal of the province, such fit and proper persons to be Magistrates\*of The Provincial Court of Newfoundland as he considers necessary.

Appointment of Magistrates.\*

(2) Each Magistrate\*shall be paid, out of the Consolidated Revenue Fund of the province, a salary fixed by the Lieutenant-Governor in Council by regulations made under Section 26.

Salary.

(3) The terms of the appointment of every Magistrate\* shall be judicially noticed.

Judicial notice of appointment.

8.—(1) Every Magistrate\*,other than a Magistrate\*referred to in Section 15, shall, before acting in the execution of his office, take and subscribe

Oaths.

- (a) the Oath of Allegiance, and
- (b) the Judicial Oath

referred to in The Oaths of Office Act.

(2) The oaths referred to in subsection (1) shall be administered by a Magistrate\* and that Magistrate\* shall transmit the subscribed oaths to the Department of Justice.

Transmission of subscribed oaths.

The Chief Provincial Court Judge.

9.—(1) The Lieutenant-Governor in Council may, subject to Section 10, appoint a Magistrate\*to be Chief Provincial Court Judge.

Appointment of Chief Magistrate.\*

\* Now Provincial Court Judge(s).1979,c.38,c.1.

*Provincial Court Act*

Illness or  
absence of  
Chief  
Magistrate.<sup>+</sup>

(2) The Minister may designate a Magistrate\* to act in the place of the Chief Magistrate<sup>+</sup> for all purposes during the illness or absence of the Chief Magistrate<sup>+</sup> and while so acting such Magistrate\* shall have all the powers and may carry out all the functions and duties of the Chief Magistrate.<sup>+</sup>

Remuneration  
of alternate\*  
Magistrate\*

(3) The Magistrate\* referred to in subsection (2) may, while exercising the powers and carrying out the functions and duties of Chief Magistrate,<sup>+</sup> be paid such remuneration additional to the salary referred to in Section 7 as the Lieutenant-Governor in Council may prescribe.

Qualifications  
of Chief  
Magistrate.<sup>+</sup>

**10.** A Magistrate\* is not qualified to be appointed Chief Magistrate<sup>+</sup> unless he

- (a) has been a member in good standing of the Bar of Newfoundland for at least ten years immediately preceding the date of his appointment as Magistrate\*;<sup>\*</sup>
- (b) was a member in good standing of the Bar of Newfoundland immediately preceding his appointment as Magistrate\* and the aggregate of his years of service as Magistrate\* and his years in good standing as a member of the Bar of Newfoundland prior to his appointment as Magistrate\* is at least ten years; or
- (c) although not a member of the Bar of Newfoundland previous to his appointment as Magistrate\*, has been serving as a Magistrate\* for at least twelve years and has received, since his appointment as Magistrate\*, a degree in Law, which is not an honorary degree or one secured by correspondence, granted to him by a University or School of Law of any Province of Canada, Great Britain or Northern Ireland;

Provided, however, that the qualifications of Chief Magistrate<sup>+</sup> do not apply to a Magistrate\* designated under subsection (2) of Section 9.

Powers,  
functions and  
duties of Chief  
Magistrate.<sup>+</sup>

**11.** The powers, functions and duties of the Chief Magistrate<sup>+</sup> extend to and include

\* Now Provincial Court Judge(s). 1979, c.38, s.1.

<sup>+</sup> Now Chief Provincial Court Judge. 1979, s.38, s.3.



*Provincial Court Act*

- (a) the general supervision and direction of the administration of the Court;
- (b) the general supervision and direction over arranging the sittings of the Court and, subject to Section 17, assigning Magistrates\*for hearings in the Court, as circumstances require, due regard being given to the greater volume of judicial work in certain of the Provincial Court Districts;
- (c) the hearing, considering and deciding upon, requests for exchange of duties among Magistrates\*, and the making of recommendations to the Minister respecting the assignment of duties to or transfer of Magistrates\*from one Magisterial#District to another when in the opinion of the Chief Magistrate+such assignment or transfer is reasonable and desirable;
- (d) the issuance of reprimands to Magistrates\*and the performance of other related duties pursuant to the provisions of Section 20;
- (e) the making of recommendations to the Lieutenant-Governor in Council respecting the suspension of Magistrates; \*
- (f) subject to the other provisions of this Act, sitting as a member of the Judicial Council;
- (g) the making of recommendations to the Minister respecting all matters affecting the general administration of the Court; and
- (h) performing such additional duties as may be prescribed by the regulations.

.....

RESIGNATION.

**13.—**(1) A Magistrate\*may, at any time, resign his office by written resignation signed by him and delivered to the Minister, Resignation of Magistrate. \*

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\* Now Provincial Court Judge(s).1979,c.38,s.1.

+ Now Chief Provincial Court Judge.1979,s.38,s.3.

# Now Provincial Court.1979,c.38,s.2.

*Provincial Court Act*

but, subject to Section 20, no Magistrate\* may be removed from office before his retirement.

Resignation  
of Chief  
Magistrate +  
as such.

(2) The Chief Magistrate+ may, at any time, resign his office as such Chief Magistrate+ by written resignation signed by him and delivered to the Minister.

REAPPOINTMENT.

Reappoint-  
ment after  
resignation.

14. A Magistrate\* who resigns his office may not be re-appointed as a Magistrate\* until after the expiration of six years from the date that his resignation takes effect: Provided that a Magistrate\* who resigned his office to attend a recognized School of Law and who has received a degree in Law from that School of Law may be reappointed a Magistrate.\*

CONCERNING EXISTING MAGISTRATES. \*

Concerning  
existing  
magistrates. \*

15.—(1) A person who is a magistrate\* when this section comes into force is deemed to have been appointed a Magistrate\* under this Act, and is subject to this Act and has the jurisdiction, powers, rights and privileges conferred upon a Magistrate\* by this Act or existing by virtue of any other Act, and any cause, matter, prosecution or proceeding pending or commenced before him as a magistrate\* before the date of the coming into force of this section, may be continued before him as a Magistrate\* under this Act, and all consequences shall follow and all proceedings may be taken thereon as if this Act had not been enacted.

Idem.

(2) The Lieutenant-Governor in Council may, upon the recommendation of the Minister, issue in a form to be approved by the Minister a Certificate under the Great Seal of the province to a person who is a magistrate\* when this section comes into force.

.....

OTHER EMPLOYMENT.

Other  
employment.

18.—(1) Subject to subsection (2), unless authorized by the Lieutenant-Governor in Council, a Magistrate\* shall not practise or actively engage in any business, trade or occupation but shall

\* Now Provincial Court Judge(s).1979,c.38,s.1.  
+ Now Chief Provincial Court Judge.1979,s.38,s.3.

### *Provincial Court Act*

devote his full time to the performance of his duties as a Magistrate.\*

(2) A Magistrate,\*with the previous written consent of the Minister, may act as a Commissioner within the meaning of The Public Enquiries Act. Idem.

(3) A breach of this section is deemed to be misbehaviour under Sections 19, 20 and 21. Misbehaviour.

#### TENURE AND REMOVAL FROM OFFICE OF MAGISTRATES.\*

19. Subject to this Act, a Magistrate\*holds office for one year after his appointment during pleasure and thenceforth during good behaviour and may not be removed from office after the expiration of one year except for Tenure.

(a) misbehaviour,

(b) neglect of duty, or

(c) failure to perform his duties because of incapacity or inability.

20.—(1) Where the Chief Magistrate+recommends to the Lieutenant-Governor in Council that a Magistrate\*holding office during good behaviour be suspended, or where the Lieutenant-Governor in Council has reason to believe that a Magistrate\*holding office during good behaviour

Suspension by  
Lieutenant-  
Governor in  
Council.

(a) is guilty of misbehaviour,

(b) is guilty of neglect of duty, or

(c) has failed to perform his duties because of incapacity or inability,

he may suspend the Magistrate\*from performance of the duties of the office.

(2) Where the Chief Magistrate+has reason to believe that a

\* Now Provincial Court Judge(s).1979,c.38,s.1.

+ Now Chief Provincial Court Judge.1979,s.38,s.3.



*Provincial Court Act*

Chief  
Magistrate<sup>+</sup> may  
reprimand or  
recommend  
suspension.

Magistrate\* holding office during good behaviour

- (a) is guilty of misbehaviour,
- (b) is guilty of neglect of duty, or
- (c) has failed to perform his duties because of incapacity or inability,

he may

- (d) reprimand the Magistrate\* either orally or in writing, or
- (e) forthwith recommend the suspension of the Magistrate\* from the performance of the duties of the office to the Lieutenant-Governor in Council.

Notice of  
suspension.

(3) Where the Lieutenant-Governor in Council suspends a Magistrate\* under subsection (1), the Clerk of the Executive Council shall forthwith give notice to the Magistrate\* by registered mail of such suspension, giving in such notice a statement of the reason for the suspension.

Enquiry at  
request of  
Magistrate\*

(4) A Magistrate\* who has been suspended pursuant to subsection (1) may within thirty days of the suspension forward to the Lieutenant-Governor in Council a request for an enquiry, and the Lieutenant-Governor in Council upon receiving such request, shall, by order, direct the Judicial Council to enquire into and report on the matter and shall direct that the enquiry be public or *in camera*, in accordance with the request of the Magistrate.\*

Where no  
enquiry  
requested.

(5) Where a Magistrate\* who has been suspended pursuant to subsection (1) does not request an enquiry under subsection (4), the Lieutenant-Governor in Council shall

- (a) order that such enquiry be held and direct whether it shall be held in public or *in camera*,
- (b) revoke the suspension, or

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\* Now Provincial Court Judge(s).1979,c.38,s.1.

+ Now Chief Provincial Court Judge.1979,s.38,s.3.

*Provincial Court Act*

(c) remove the Magistrate\* from office.

(6) The Judicial Council, in the performance of its duties under this section and Section 23, and every member thereof in such performance, has, for the purposes of the enquiry, all the powers, privileges and immunities that are or may be conferred upon a Commissioner by or under The Public Enquiries Act, including the power to take evidence under oath, and the Judicial Council is deemed to be an "investigating body" for the purposes of The Evidence (Public Investigations) Act.

Powers of  
Judicial Council  
for enquiry.

(7) The Magistrate\* whose behaviour is the subject of the enquiry shall be given notice of the time and place appointed for the enquiry and he may attend with counsel, produce evidence and cross-examine witnesses.

Notice to  
Magistrates.\*

(8) Where the report of the enquiry confirms that the Magistrate\*

Removal.

(a) is guilty of misbehaviour,

(b) is guilty of neglect of duty, or

(c) has failed to perform his duties because of incapacity or inability,

as the case may be, the Lieutenant-Governor in Council shall remove him from office and a copy of the Order-in-Council and all reports, evidence and correspondence relating thereto shall be laid before the House of Assembly by the Minister within fifteen days after the day of such removal, if the Legislature is then in Session, and, if it is not, then within fifteen days after the commencement of the next ensuing Session.

(9) Where the report of the enquiry does not confirm that the Magistrate \*

Revocation of  
suspension.

(a) is guilty of misbehaviour,

(b) is guilty of neglect of duty, or

(c) has failed to perform his duties because of incapacity or inability,

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\* Now Provincial Court Judge(s).1979,c.38,s.1.

*Provincial Court Act*

as the case may be, the Lieutenant-Governor in Council shall revoke the suspension and the Magistrate\* shall stand in all respects as if no suspension had been made.

Copy of report  
on Magistrate.

(10) The Judicial Council shall give a copy of the report of the enquiry to the Magistrate\* whose behaviour is the subject of the enquiry.

REMOVAL FROM OFFICE OF CHIEF MAGISTRATE<sup>+</sup>  
AS SUCH CHIEF MAGISTRATE<sup>+</sup>

Removal of  
Chief  
Magistrate. +

21. Where the Minister has reason to believe that, because of the Chief Magistrate's +

- (a) misbehaviour,
- (b) neglect of duty, or
- (c) failure to perform his duties because of incapacity or inability,

in respect of his office as Chief Magistrate<sup>+</sup>, the Chief Magistrate<sup>+</sup> should be removed from office as Chief Magistrate,<sup>+</sup> he may recommend to the Lieutenant-Governor in Council that the Chief Magistrate<sup>+</sup> be removed from his office as Chief Magistrate<sup>+</sup> and

- (d) upon such recommendation being made, the Lieutenant-Governor in Council may, by order, remove the Chief Magistrate<sup>+</sup> from his office as Chief Magistrate:<sup>+</sup> Provided, however, that such removal does not affect the Magistrate\* concerned in his office as Magistrate\* as contradistinguished from his office as Chief Magistrate<sup>+</sup>, the provisions of Sections 19 and 20 remaining in effect in respect of his office as Magistrate\*.

THE JUDICIAL COUNCIL OF THE PROVINCIAL  
COURT OF NEWFOUNDLAND.

Establishment  
of Judicial  
Council.

22.—(1) There is hereby established The Judicial Council of The Provincial Court of Newfoundland consisting of six members who shall be

\* Now Provincial Court Judge(s).1979,c.38,s.1.

+ Now Chief Provincial Court Judge.1979,s.38,s.3.



Provincial Court Act

- (a) one Judge of the Supreme Court,
- (b) one Judge of a District Court,
- (c) one Bencher of The Law Society of Newfoundland, and
- (d) two other persons nominated by the Minister

to be appointed by the Lieutenant-Governor in Council, and

- (e) *ex officio* the Chief Magistrate:+

Provided, however, that the Chief Magistrate+shall not function as a member of the Judicial Council during an enquiry by the Judicial Council into the conduct of a Magistrate\* who has been suspended on the recommendation of the Chief Magistrate+or, during the period, if any, the Chief Magistrate+is the subject of a complaint to the Judicial Council in the exercise of its functions under Section 23 or of an enquiry by the Judicial Council under the provisions of Section 20 and until the resolution of such complaint or enquiry.

(2) The Lieutenant-Governor in Council, in appointing a member of the Judicial Council, shall specify, in such appointment, the period which, subject to subsection (5), is covered by the appointment.

Term of member of Judicial Council.

(3) The Lieutenant-Governor in Council shall designate one of the members of the Judicial Council to be the Chairman thereof and another member to be the Vice-Chairman thereof who shall act in the case of the illness or absence of the Chairman: Provided, however, that the Chief Magistrate+shall not be the Chairman or Vice-Chairman.

Chairman and Vice-Chairman.

(4) Any one or more or all of the members of the Judicial Council may, subject to any applicable Act of the province or of Canada, be paid such allowance or remuneration and expenses, if any, as the Lieutenant-Governor in Council may prescribe.

Remuneration and expenses.

(5) The appointed members of the Judicial Council shall serve during pleasure.

Tenure.

\* Now Provincial Court Judge(s).1979,c.38,s.1.  
+ Now Chief Provincial Court Judge.1979,s.38,s.3.

*Provincial Court Act*

**Quorum.** (6) A majority of the members of the Judicial Council, of whom one shall be the Chairman or the Vice-Chairman, constitutes a quorum and is sufficient for the exercise of all of the jurisdiction and powers of the Judicial Council.

**Reappointment.** (7) Appointed members of the Judicial Council are eligible for reappointment from time to time.

**Functions of Judicial Council.** 23. The functions of the Judicial Council are

(a) at the request of the Minister, to consider proposed appointments of Magistrates\* and make a report and recommendation thereon to the Minister;

(b) to receive complaints of the

(i) misbehaviour,

(ii) neglect of duty, or

(iii) failure to perform duties because of incapacity or inability

of Magistrates\*;

(c) to take such action to investigate complaints referred to in paragraph (b) as it considers necessary including the review thereof with the Magistrate\* concerned where appropriate, and, where appropriate, to comply with the procedure prescribed by this Act for and related to the removal of a Magistrate\*, and in due course to make a report, and if deemed necessary, a recommendation for the removal of the Magistrate\* to the Lieutenant-Governor in Council;

(d) to review every two years the areas of the Magisterial<sup>#</sup> Districts existing in the province, including, without limiting the generality of the foregoing, to review the necessity of either the creation of a new Magisterial<sup>#</sup> District or the amalgamation of one or more Magisterial<sup>#</sup> Districts into one Magisterial<sup>#</sup> District and report

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\* Now Provincial Court Judge(s).1979,c.38,s.1.

<sup>#</sup> Now Provincial Court.1979,c.38,s.2.

*Provincial Court Act*

thereon to the Minister; and

- (e) to consider proposals for improving the judicial services of the Court and to report thereon to the Minister.

.....

CONCERNING THE SUMMARY JURISDICTION ACT.

**31.** Without limiting the generality of Section 5, the provisions of The Summary Jurisdiction Act, Chapter 364 of The Revised Statutes of Newfoundland, 1970,<sup>+</sup> as now or hereafter amended, shall, where not inconsistent with this Act, apply to matters coming within the ambit of this Act.

Application of  
The Summary  
Jurisdiction Act.

.....

<sup>+</sup>Repealed by the Small Claims Act.1979,c.34,s.14.



FAMILY COURTS ACT

R.S.N. 1970, c. 122

with amendments to date, including 1979, c. 35, Schedule A

Note:

The jurisdiction vested in this act is exercised by the Provincial Court and every judge of the Provincial Court throughout the province, except in the judicial area of St. John's where its operation is suspended by the Unified Family Court, a division of the Supreme Court of Newfoundland.

The Family Courts Act contains 15 sections, and only provisions of constitutional law interest are reproduced below.

FAMILY COURTS ACT

R.S.N. 1970, c. 122

et ses modifications à jour, y inclus  
1979, c. 35, annexe A

Note:

La compétence matérielle conférée par cette loi est exercée par la Cour provinciale dans toute la province, sauf dans le district judiciaire de St-Jean où elle est exercée à titre expérimental par la "Unified Family Court" en tant que division de la Cour suprême de Terre-Neuve.

La présente loi renferme 15 articles. Seules les dispositions d'intérêt constitutionnel sont reproduites ici.

## An Act to Provide for the Establishment of Family Courts

Short title.	1. This Act may be cited as The Family Courts Act.
Establishment of Family Courts.	2. The Lieutenant-Governor in Council may by Proclamation establish and constitute in Newfoundland a court or courts to be known as Family Courts and in such proclamation define the territorial limits of the jurisdiction of such court or courts.
Appointment of judges.	3.—(1) The Lieutenant-Governor in Council may appoint judges to preside over such courts.  (2) Any judge appointed under this Act shall hold office during pleasure.
Magistrate* may act as judge.	4.—(1) When the judge of a Family Court is absent because of illness or for any other reason whatsoever, or when there is a vacancy in the office of judge, any Magistrate* may preside over the Family Court.
Powers and duties of Magistrates acting as judges.	(2) Every Magistrate* presiding over a Family Court pursuant to subsection (1) has and may exercise all of the powers conferred, and shall discharge all of the duties imposed, by this or any other Act, on the judge of a Family Court.
Interpretation.	(3) For the purposes of this Act, "Magistrate*" includes a Stipendiary Magistrate*, a District Magistrate* and an Assistant Magistrate* appointed under the laws of the province. 1973, No. 3, s. 2.  .....
Jurisdiction.	6. Family Courts shall have jurisdiction in the following cases:  (a) cases under The Adoption of Children Act, The Child Welfare Act and The Welfare of Children Act, 1973, No. 48, s. 12 (a) and (p). (b) cases under The School Attendance Act; (c) cases involving offences committed by one spouse against another or by a parent or guardian against a child;

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\*Now Provincial Court Judge(s). 1979, c. 38, s. 7.



## FAMILY COURTS ACT

- (d) cases involving offences relating to family life; and
- (e) such other cases or classes of cases, including those excepted in paragraph (a) as the Lieutenant-Governor in Council may from time to time assign to them.

**7.** Every judge of a Family Court shall moreover, in the territory for which it is established, strive for the protection of children and for good relations between consorts, and for such purposes

Duties of judges.

- (a) he shall advise all persons who seek his good offices for the rehabilitation of juvenile delinquents, the protection of children who are particularly exposed to moral and physical dangers on account of their surroundings or other special circumstances, and, in general, he shall collaborate in the improvement of the lot of unhappy and neglected children;
  - (b) he shall act as moderator, when so requested, in any dispute between consorts or between parents and children.
- .....

**11.** The judge of a Family Court shall have all the powers of a judge of a juvenile court with respect to the adoption of children under Part V of The Welfare of Children Act.

Adoption of children.

**12.** Family Courts and the judges thereof shall have the same power to administer oaths, compel the attendance of witnesses and punish for contempt as is now possessed by stipendiary magistrates.

Administration of oaths, etc.

**13.—(1)** The trial of all juvenile offenders heard in a Family Court shall be in accordance with the provisions of The Juveniles Act, and for the purposes of such trial a Family Court has all of the powers of a juvenile court referred to in that Act.

Trial of juvenile offenders

(2) All trials held by a Family Court may be held in private and the judge shall exclude or cause to be excluded from the room or place where any trial is being held all persons other than the counsel and witnesses in the case and such other persons as the judge in his discretion may permit to be present.

Trials may be held in camera

(3) In the exercise of his jurisdiction a judge of a Family Court has, subject to this Act, all of the powers granted to a court of summary jurisdiction under The Summary Proceedings Act, 1979, c. 35, Sch. A.

Powers of judge.

## SMALL CLAIMS ACT

S.N. 1979, c. 34

with amendments to date, including 1980, c. 24, s. 13

### Note:

This statute assigns the jurisdiction in small claims matters to the Provincial Court of Newfoundland. It also provides for the transfer of proceedings to the District Court in certain cases. Appeals from a decision of a Provincial Court in small claims cases lie to the District Court.

The Small Claims Act contains 35 sections and two schedules, and only provisions of constitutional law interest are reproduced below.

## SMALL CLAIMS ACT

S.N. 1979, c. 34

et ses modifications à jour, y inclus  
1980, c. 24, art. 13

Note:

La présente loi confère à la Cour provinciale de Terre-Neuve toute compétence en matière de petites créances. Cette compétence peut, toutefois, être exercée par la Cour de district dans certains cas. Il y a appel à la Cour de district des décisions rendues par la Cour provinciale en matière de petites créances.

Cette loi renferme 35 articles et deux annexes. Seules les dispositions qui offrent un intérêt en droit constitutionnel sont reproduites ci-après.



# AN ACT RESPECTING SMALL CLAIMS

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short  
title

1. This Act may be cited as The Small Claims Act.

## Definitions

2. In this Act

(a) "Chief Judge" means the Chief Provincial Court Judge;

(b) "court" means The Provincial Court of Newfoundland, established by The Provincial Court Act, 1974;

(c) "judge" means a Provincial Court judge; and

(d) "small claim" means a claim under this Act.

## Jurisdiction

3.(1) Subject to the restrictions and conditions contained in this Act, a judge has jurisdiction to try and adjudicate upon any claim for debt (whether payable in money or otherwise) or for damages (including damages for breach of contract) where the amount claimed does not exceed one thousand dollars, including claims within that amount for the recovery of taxes or charges under The City of St. John's Act, The City of Corner Brook Act, The Local Government Act, 1972, The Community Councils Act, 1972 or The Local School Tax Act, or under any regulation, order or by-law made thereunder.

(2) A judge does not have jurisdiction to hear or adjudicate upon a claim or counterclaim

(a) in which the title to land is brought into question;

(b) in which the validity of any devise, bequest or limitation is disputed;

(c) for malicious prosecution, false imprisonment, defamation, criminal conversation, seduction or breach of promise of marriage; or

(d) against a judge of any court, justice or public officer for anything done

The Small Claims Act

by him while executing the duties of his office.

.....

Appeals

12.(1) Any party to a proceeding may appeal from a judgment or order of a judge to the District Court in the judicial centre serving the area where the case was tried.

(2) Where an appeal is taken, the appellant shall

(a) give notice of appeal in writing within thirty days of the judgment or order to the court and to the other parties in the proceeding; and

(b) give such security for costs as in the opinion of the court is sufficient.

.....





FUNDAMENTAL RIGHTS



LIBERTÉS FONDAMENTALES



## FUNDAMENTAL RIGHTS

### Introduction

In addition to fundamental rights guaranteed by federal statutes referred to in volume 2 of this collection (Chapter H), fundamental rights are also protected by the following provincial statute of Newfoundland, reproduced below:

1. Newfoundland Human Rights Code, R.S.N. 1970, c. 262, as amended.

In addition, the Human Rights Anti-Discrimination Act, S.N. 1979, c. 39, not reproduced here, partially amends a number of laws with respect to civil rights.

Other statutes of Newfoundland, not reproduced here, contain provisions concerning fundamental right, such as:

1. Labour Standards Act, S.N. 1977, c. 52, as amended.
2. Labour Relations Act, S.N. 1977, c. 64, as amended.
3. Public Service (Collective Bargaining) Act, 1973, S.N. 1973, No. 123.
4. Status of Women Advisory Council Act, S.N. 1980, c. 18.
5. Credit Reporting Agencies Act, S.N. 1977, c. 18.

It should be noted that Newfoundland has a bill pending in the House of Assembly (2d sess., 38th Gen. Assembly) concerned with fundamental rights entitled Freedom of Information Act (Bill 21).

### Selected references:

Tarnopolsky, Walter S., "Human Rights," in Bellamy, David J., and others, The Provincial Political Systems, op. cit., pp. 269-279.



## LIBERTÉS FONDAMENTALES

### Introduction

Outre la législation fédérale signalée au chapitre H du volume 2 de cette collection, la loi provinciale suivante, reproduite ci-après, assure la protection des libertés fondamentales à Terre-Neuve:

1. Newfoundland Human Rights Code, R.S.N. 1970, c. 262 et ses modifications

Quant à la loi intitulée Human Rights Anti-Discrimination Act, S.N. 1979, c. 39, elle n'est pas reproduite, vu qu'elle vient modifier les dispositions de nature discriminatoire de certaines lois de la province.

D'autres lois terre-neuviennes, non reproduites ici, renferment également des dispositions relatives aux libertés fondamentales. Parmi celles-ci, il y a lieu de signaler les suivantes:

1. Labour Standards Act, S.N. 1977, c. 52 et ses modifications
2. Labour Relations Act, S.N. 1977, c. 64 et ses modifications
3. Public Service (Collective Bargaining) Act, 1973, S.N. 1973, no 123
4. Status of Women Advisory Council Act, S.N. 1980, c. 18
5. Credit Reporting Agencies Act, S.N. 1977, c. 18

Enfin, il convient de souligner qu'au cours de la deuxième session de la 38e législature terre-neuvienne, l'Assemblée législative a été saisie du projet de loi 21 intitulé Freedom of Information Act et encore pendant.

### Source choisie:

Tarnopolsky, Walter S., "Human Rights" dans David J. Bellamy et al, The Provincial Political Systems; Comparative Essays, Toronto, Methuen, 1976, pp. 269-279.

# An Act to Establish the Newfoundland Human Rights Code and to Provide for its Implementation

R.S.N. 1970, c.262

with amendments to date, including 1979,c.35,s.34(Sch.B)

et ses modifications à jour, y inclus 1979,c.35, art.34 (Sch.B)

WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

AND WHEREAS disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people;

AND WHEREAS it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;

AND WHEREAS this Legislature, believing implicitly in the Universal Declaration of Human Rights as proclaimed by the United Nations, desires to reaffirm its faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and has determined to promote social progress and better standards of life in larger freedom:

1. This Act may be cited as The Newfoundland Human Rights Code. Short title.

## INTERPRETATION.

### 2. In this Act

### Interpretation.

- (a) "commercial unit" means any building or other structure or part thereof that is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property, or any space that is used or occupied or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building or other structure or in a part thereof;

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- (b) "Commission" means
- (i) a Human Rights Commission appointed under subsection (1) of Section 13, and
  - (ii) an *Ad Hoc* Human Rights Commission appointed under subsection (1) of Section 16A;
- (c) "Director" means the Director appointed under Section 13;
- (d) "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- (e) "employment agency" includes a person who undertakes with or without compensation to procure employees for employers and a person who undertakes with or without compensation to procure employment for persons;
- (f) "establishment" means a place of business or the place where an undertaking or a part thereof is carried on;
- (g) "Minister" means the Minister of Manpower and Industrial Relations ;
- (h) "pay" means remuneration in any form;
- (i) "person", in addition to its meaning in The Interpretation Act, includes an employment agency, trade union and employers' organization;
- (j) "self-contained dwelling unit" means a dwelling house, apartment or other similar place of residence that is used or occupied or is intended, arranged or designed to be used or occupied as separate accommodation for sleeping and eating; and



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- (k) "trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers. 1973, No. 34, s. 39(1), Sch. B, Item 15; 1974, No. 114, s. 2.

APPLICATION AND ADMINISTRATION.

**3.** The prohibitions contained in this Act apply to and bind Her Majesty in right of the province and every agency of Her Majesty in right of the province.

Crown bound  
by this Act.

**4.—(1)** The purpose and intent of this Act is to regulate matters within the competence of the Legislature of the province, and nothing in this Act shall be construed to affect or regulate any matter which is not subject to the legislative authority of the said Legislature.

Interpretation.

(2) This Act shall be construed and interpreted so as to ensure that no provision thereof shall prejudicially affect any right or privilege with respect to denominational schools, common (amalgamated) schools, or denominational colleges, that any class or classes of persons had by law in the province at the date of Union of Newfoundland with Canada, or any such right or privilege hereafter by law acquired by the Pentecostal Assemblies of Newfoundland.

Idem.

(3) Any provision of any statute or law or agreement now or hereafter enacted or made whereby preference is given, or agreed to be given, to

Idem.

(a) Newfoundland labour or workmen whose place of residence, or usual place of residence, or ordinary place of residence, is Newfoundland; or

(b) material, equipment or any other thing produced, originating, manufactured or distributed and serviced in Newfoundland

shall have full force and effect notwithstanding any of the other provisions of this Act, and nothing contained in this Act shall be construed as in any way

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- (c) restricting the force and effect of any statute or law or agreement now or hereafter enacted or made; or
- (d) preventing the enactment or making hereafter of any statute or law or agreement

respecting the giving of any such preference.

Administra-  
tion.

5. Subject to Section 13, the Minister is charged with the administration of this Act.

Application  
of Act.

6. Subject to Sections 23 and 31, nothing in this Act shall be construed as enlarging or restricting, or otherwise altering the force and effect of, any provision in any other Act.

### FAIR ACCOMMODATION PRACTICES.

Right to  
admission to  
places of  
public  
accommodation.

7. No person shall deny to any person or class of persons admission to or enjoyment of the accommodation, services or facilities available in any place to which the public is customarily admitted by reason only of the race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin of such person or class of persons.

1974, No. 114, s. 3.

Right to  
occupy  
commercial  
and dwelling  
units.

8. No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall

- (a) deny to any person or class of persons occupancy of any commercial unit or any self-contained dwelling unit; or
- (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any self-contained dwelling unit

by reason only of the race, religion, religious creed, political sex, marital status, opinion, colour or ethnic, national or social origin of such person or class of persons or of any other person or class of persons. 1974, No. 114, s. 3.

### FAIR EMPLOYMENT PRACTICES.

Discrimination  
in employment.

9.—(1) No employer, or person acting on behalf of an employer, shall refuse to employ or to continue to employ or otherwise discriminate against any person in regard to

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employment or any term or condition of employment because of

- (a) that person's race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin; or
- (b) subject to subsection (5), that person's age, if that person has attained the age of nineteen years and has not attained the age of sixty-five years,

but this subsection does not apply to the expression of a limitation, specification or preference based on a *bona fide* occupational qualification.

(2) No employer, or person acting on behalf of an employer, shall use, in the hiring or recruitment of persons for employment, an employment agency that discriminates against persons seeking employment because of their race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin.

Discrimination  
by employment  
agency.

(3) No trade union shall exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by any employer, because of

Discrimination  
by trade union.

- (a) that person's race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin; or
- (b) subject to subsection (5), that person's age, if that person has attained the age of nineteen years and has not attained the age of sixty-five years.

(4) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry in connection with employment that expresses either directly or indirectly

Forms of  
application  
and advertise-  
ment concerning  
employment.

- (a) any limitation, specification or preference as to race, religion, religious creed, sex, marital status.



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political opinion, colour or ethnic, national or social origin; or

(b) subject to subsection (5), any intent to

- (i) dismiss from employment,
- (ii) refuse to employ or rehire, or
- (iii) discriminate against

any person because of age, if that person has attained the age of nineteen years and has not attained the age of sixty-five years,

but this subsection does not apply to the expression of a limitation, specification or preference based on a *bona fide* occupational qualification.

Saving.

(5) The provisions of subsections (1), (3) and (4) as to age shall not apply to

- (a) termination of employment because of the terms or conditions of any *bona fide* retirement or pension plan;
- (b) operation of the terms or conditions of any *bona fide* retirement or pension plan which have the effect of a minimum service requirement; or
- (c) operation of the terms or conditions of any *bona fide* group or employee insurance plan.

Exceptions.

(6) This section does not apply to an employer

- (a) which is an exclusively religious or fraternal organization that is not operated for private profit; or
- (b) in respect of the employment of a domestic employed and living in a single-family home. 1974, No.114, s.4.

Discrimination in employment arising out of attachment or assignment of pay.

"9A.—(1) No employer, or person acting on behalf of an employer, shall refuse to employ or to continue to employ or otherwise discriminate against any person in regard to employment or any term or condition of employment because of that person's pay

- (a) from any other or previous employer having been,  
or

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(b) from him or another employer being or becoming subject to

(c) attachment or seizure in satisfaction of any claim against, or

(d) alienation, assignment or transfer by

that person, but discrimination based on a *bona fide* occupational qualification with respect to persons whose duties include the collecting, receiving or depositing of money belonging to the employer does not constitute a failure to comply with this subsection.

(2) No employer, or person acting on behalf of an employer, shall use, in the hiring or recruitment of persons for employment, an employment agency that discriminates against persons seeking employment for any reason that would be, in regard to an employer or person acting on behalf of an employer, discrimination under subsection (1).

Discrimination by employment agency.

(3) No trade union shall exclude any person from full membership or expel or suspend or otherwise discriminate against any of its members or discriminate against any person in regard to his employment by any employer for any reason that would be, in regard to an employer or person acting on behalf of an employer, discrimination under subsection (1).

Discrimination by trade union.

(4) No person shall use or circulate any form of application for employment or publish any advertisement in connection with employment or prospective employment or make any written or oral inquiry in connection with employment that expresses either directly or indirectly

Forms of application and advertisement concerning employment.

(a) any limitation, specification or preference as to any person; or

(b) any intent to

(i) dismiss from employment,

(ii) refuse to employ or rehire, or

(iii) discriminate against

any person

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for any reason that would be, in regard to an employer or person acting on behalf of an employer, discrimination under subsection (1).

## Exception.

(5) This section does not apply to an employer in respect of the employment of a domestic employed and living in a single-family home. 1974, No. 114, s. 5.

## Pay for female employees.

10.—(1) No employer, and no person acting on his behalf, shall establish or maintain differences in wages between male and female employees, employed in the same establishment who are performing, under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility, except where such payment is made pursuant to

- (a) a seniority system, or
- (b) a merit system.

## Other rights for females.

(2) A female employee employed in the same establishment as a male and who is performing under the same or similar working conditions, the same or similar work on jobs requiring the same or similar skill, effort and responsibility shall have

- (a) opportunities for training and advancement, and
- (b) pension rights and insurance benefits equal to those applicable to the male.

## Employer may not reduce wages to comply with subsec. (1).

(3) No employer shall reduce the wages of a male or female employee in order to comply with subsection (1). 1974, No. 114, s. 6.

## DISCRIMINATORY PUBLICATIONS.

11.—(1) No person shall

## Discriminatory publications.

- (a) publish or display or cause to be published or displayed;  
or
- (b) permit to be published or displayed on lands or premises or in a newspaper, through a radio or television broadcasting station or by means of any other medium which he owns or controls



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any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or any class of persons for any purpose because of the race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin of such person or class of persons.

Freedom of  
speech  
preserved.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinions upon any subject by speech or in writing. 1974, No. 114, s. 7.

### PROTECTION OF COMPLAINANTS AND OTHERS.

Protection of  
complainants,  
witnesses  
and others.

**12.** No person, employer or trade union shall evict, discharge, suspend, expel or otherwise discriminate against any person because he has made a complaint or given evidence or assisted in any way in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

Appointment of  
Commission.

**13.—(1)** The Lieutenant-Governor in Council shall appoint a Human Rights Commission for the purposes of this Act.

Composition of  
Commission.

(2) The Commission shall be composed of three or more members as may be fixed from time to time by the Lieutenant-Governor in Council and one of the members shall be designated as chairman of the Commission.

Term of office.

(3) Each Commissioner shall hold office for the term prescribed in his appointment and is eligible for reappointment.

Remuneration  
of Commission-  
ers.

(4) The chairman and other members of the Commission shall be paid such remuneration as may be fixed by the Lieutenant-Governor in Council and such actual and reasonable expenses as are incurred by them in the discharge of their duties.

Vacancies.

(5) The Lieutenant-Governor in Council may fill any vacancy in the membership of the Commission.

Appointment of  
Director and  
duties.

(6) The Lieutenant-Governor in Council shall appoint to the staff of the Human Rights Commission appointed pur-

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suant to subsection (1), to hold office during pleasure, a Director for the purposes of this Act and the Director shall

- (a) be the Executive Director and a member of the Commission; and
- (b) perform the duties and functions prescribed for him by this Act, by the Commission, by the Minister or by the regulations. 1974, No. 114, s. 8.

Administration  
of Act and  
functions of  
Commission.

14. The Commission is, subject to the Minister, charged with the administration of this Act and, without limiting the generality of the foregoing, it is the function of the Commission to

- (a) forward the principle that every person is equal in dignity and rights without regard to race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin;
- (b) promote an understanding of, acceptance of and, compliance with this Act;
- (c) develop and conduct educational programmes and research designed to eliminate discriminatory practices relating to race, religion, religious creed, sex, marital status, political opinion, colour or ethnic, national or social origin;
- (d) advise and assist government departments and agencies thereof and co-ordinate their activities as far as these activities concern human rights;
- (e) advise the government on suggestions, recommendations and, requests made by private organizations, groups and, individuals as far as these suggestions, recommendations and requests concern human rights;
- (f) co-operate with and assist any person, organization or group concerned with human rights, whether within or outside the province;
- (g) report as required by the Minister on the business and activities of the Commission; and

- (h) consider, investigate or administer any matter or activity referred to the Commission by the Lieutenant-Governor in Council or by the Minister.  
1974, No. 114, s. 8.

15. Subject to Section 24, when a person claiming to be aggrieved by an alleged violation of this Act makes a complaint in writing to the Director on a form prescribed by the regulations,

Complaint  
in writing  
to Director.

- (a) the Director, or
- (b) an inspector selected by the Director from the inspectors appointed or designated by the Minister under subsection (1) of Section 28

may enquire into the complaint and endeavour to effect a settlement of the matter complained of, and different inspectors may be selected in respect of different complaints.  
1974, No. 114, s. 8.

16. If the Director or the inspector selected by the Director under Section 15, as the case may be, is unable to affect a settlement of the matters complained of, he shall so report to the chairman of the Commission who in turn shall so report to the Minister and make a recommendation as to whether or not the matter should be referred for further enquiry. 1974, No. 114, s. 8.

Report to  
Minister  
where no  
settlement.

16A.—(1) Where

- (a) the Minister receives the recommendations of the chairman under Section 16, or
- (b) the Minister deems it desirable to have an enquiry made into any matter whatsoever coming within the purview of the Act

Minister may  
refer matter  
to Commission  
for investigation.

the Minister may refer the matter to

- (c) the Human Rights Commission appointed pursuant to subsection (1) of Section 13 or one or more members of that Commission, or
- (d) an *Ad Hoc* Human Rights Commission consisting of one or more persons appointed by the Minister for investigation



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with a view to settlement of the matter.

Chairman. (2) If more persons than one are appointed to an *Ad Hoc* Human Rights Commission, the Minister may designate one member as chairman.

Staff. (3) The Minister may provide an *Ad Hoc* Human Rights Commission with a secretary and such clerical or other assistance as the Minister deems necessary and any staff so provided shall be paid such remuneration as may be fixed by the Lieutenant-Governor in Council.

Administration. (4) The chairman and the other members of every *Ad Hoc* Human Rights Commission shall be paid such remuneration as may be fixed by the Lieutenant-Governor in Council and such actual and reasonable expenses as are incurred by them in the discharge of their duties.

Procedure. (5) Every Commission may determine its own procedure and may receive and accept such evidence and information on oath, affidavit or otherwise as in its discretion it considers fit. 1974, No. 114, s. 8; 1978, c. 35, s. 18.

Powers of Commission to subpoena witnesses. **17.**—(1) Every Commission and each member thereof shall have and may exercise all of the powers that may be conferred upon a Commissioner under The Public Enquiries Act, including, without limiting the generality of the foregoing, the power to subpoena witnesses and to require such witnesses to give evidence orally or in writing upon oath or upon solemn affirmation and to produce such documents and things as the Commission may deem requisite to the full investigation of the matters referred to it.

Inspection. (2) Any Commission, any person thereunto authorized in writing by a Commission, the Director and any person appointed or designated under Section 28 may, from time to time and at all reasonable times, enter any building, factory, workshop or other premises or place in the province

(a) to determine whether this Act and the regulations and any order made under this Act or the regulations are being and have been complied with;

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(b) to inspect, audit and examine books of account, records and documents; or

(c) to inspect and view any work, material, machinery, appliance or article therein,

and the persons occupying or in charge of such building, factory, workshop, premises or place shall

(d) answer all questions pertaining to those matters put to them; and

(e) produce for inspection such books of account, records, documents, material, machinery, appliance or article requested

by any person empowered by or under this subsection to enter such building, factory, workshop, premises or place.

**18.—(1)** Every Commission shall promptly enquire into the matters referred to it and shall give full opportunity to all parties to present evidence and to make representations, and, when the Commission has completed its enquiry, it shall recommend to the Minister the course that should be taken with respect to the matters referred to it.

Functions of  
Commission.

(2) If the Commission is composed of three or more persons, any recommendation of the majority constitutes a recommendation of the Commission. 1974, No. 114, s. 9.

Majority  
report.

**19.—(1)** When a Commission has made its recommendations, the Minister may request it to clarify or amplify them or to reconsider all or any part thereof or to do all or any of such things, and, until the Commission has complied with such request, he may defer any action under Section 20.

Further  
report by  
Commission.

(2) Every Commission to whom a request has been made pursuant to subsection (1) may make such amendments, as it deems fit, to such of its recommendations as the Minister has, pursuant to that subsection, requested it to reconsider.

Amendments.

**20.** When the Minister receives the recommendations of a Commission, he shall furnish a copy thereof to each of the persons affected thereby, and, if he considers it desirable, he shall publish such recommendations in such other manner as he considers advisable.

Publication  
of Commission's  
recommendations.

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Minister's  
order.

**21.—(1)** The Minister may issue whatever order he considers necessary to carry out the recommendations of the Commission.

Effect of  
order.

(2) Every person affected by an order made under subsection (1) shall comply with the order.

Enquiries.

**22.** The Minister may, where he deems it expedient, undertake or cause to be undertaken such enquiries and other measures as appear advisable to him to promote the purposes of this Act and may use such means therefor as he considers desirable.

Offence.

**23.—(1)** Every person who

(a) does anything prohibited by; or

(b) refuses or neglects to do anything required by

this Act, the regulations or any order made under this Act or the regulations, or who

(c) makes a false statement in answer to any question put to him under this Act; or

(d) otherwise contravenes or fails to comply with this Act, the regulations or any order made under this Act or the regulations,

is guilty of an offence and liable on summary conviction,

(e) if a natural person, to a fine not exceeding one hundred dollars; or

(f) if a trade union, employers' organization, employment agency or any person other than a natural person, to a fine not exceeding five hundred dollars.

Compensation.

(2) Where an employer is convicted of an offence under this Act, by reason of his having suspended, transferred, laid off or discharged an employee contrary to this Act, any magistrate may (after due consideration has been given by the magistrate to all circumstances of the case, including, without limitation of the foregoing, any wages, salary or remuneration earned with another employer by such employee) in addition to imposing a fine under subsection (1), order the employer



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- (a) to pay compensation for loss of employment to the employee, not exceeding the sum as in the opinion of the magistrate is equivalent to the wages, salary or remuneration that would have accrued to the employee up to the date of conviction, but for such suspension, transfer, layoff or discharge, and such provision of the order shall be enforceable against the employer in the same manner as a judgment of the magistrate in a civil action; and
- (b) to reinstate the employee in his employ, at such date as in the opinion of the magistrate is just and proper under the circumstances, in the position the employee would have held but for such suspension, transfer, lay-off or discharge.

(3) Where an employer is convicted of an offence under this Act, by reason of his having underpaid an employee contrary to this Act, any magistrate shall, in addition to imposing a fine under subsection (1), order the employer to pay to the employee any outstanding difference between the wages actually paid to the employee and the wages which are in the opinion of the magistrate payable according to this Act and such order shall be enforceable against the employer in the same manner as a judgment of the magistrate in a civil action, but the right of an employee to take any other proceeding for recovery of the amount of wages to which he is entitled according to this Act is not barred except by satisfaction of that amount, and Section 85 of The Summary Jurisdiction Act\* shall not, except with the written consent of the Minister of Justice, be applied in disposing of a prosecution for an offence referred to in this subsection.

Underpayment.

(4) For the purposes of subsection (2) or (3), any magistrate has jurisdiction to make any order referred to in that subsection, notwithstanding the amount of money involved.

Jurisdiction of magistrate.

(5) A conviction in accordance with subsection (1) does not operate as a bar to further prosecution or prosecutions for the continued contravention or failure to comply in accordance with subsection (1), and, where there is a continuing such contravention or failure to comply, each day's continuance constitutes a separate offence.

Continuing offence.

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\* Amended to read: Section 663 of the Criminal Code. 1979, c.35, s.34(2) (Sch.B).

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Respecting  
complaints  
before courts  
of summary  
jurisdiction.

**24.** Subject to Section 30, nothing in this Act restricts the right of any aggrieved person to initiate proceedings or to lay a complaint before a court of summary jurisdiction for an alleged contravention of or failure to comply with this Act, but, if any such complaint is laid, then the remedies provided by Sections 14 to 21 shall not be applied in respect of that complaint.

Injunction

**25.—**(1) Where a person has been convicted of any offence under this Act, the Minister may apply to a judge of the Supreme Court of Newfoundland<sup>+</sup> for an order enjoining the person so convicted from continuing the offence,

Order.

(2) The judge may make such order as he deems fit, and the order may be entered and enforced in the same manner as any other order or judgment of the Supreme Court of Newfoundland.

Prosecution  
of employers'  
organization  
or trade  
union.

**26.** A prosecution for an offence under this Act may be brought against an employers' organization or a trade union in the name of such organization or trade union, and any act or thing done or omitted by an officer, official or agent of an employers' organization or trade union within the scope of his authority to act on behalf of the employers' organization or trade union shall be deemed to be an act or thing done or omitted by the employers' organization or trade union as well as being the personal act or omission of that officer, official or agent.

Technical  
defect.

**27.** No proceeding under this Act shall be deemed invalid by reason of any defect in form or any technical irregularity.

Appointment  
of inspectors.

**28.—**(1) The Minister may appoint or designate such inspectors, officers and other persons as he may deem necessary for the proper carrying out of this Act and the regulations.

Application  
of subsection  
(2) of Section  
17.

(2) Subsection (2) of Section 17 applies to any inspector, officer or other person appointed or designated under subsection (1) of this Section 28.

### REGULATIONS.

egulations.

**29.—**(1) The Lieutenant-Governor in Council may make such regulations not inconsistent with this Act as he deems advisable for the more effective carrying out of its purposes according

<sup>+</sup> Refers to a judge of the Trial Division.  
1974, c.57, s.38(264(y)).



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to its true spirit, intent and meaning and for dealing with any matters for which no express provision has been made or in respect of which only partial or imperfect provision has been made, and in particular, but without limitation of the foregoing, may make regulations

- (a) prescribing forms, returns, statements and other documents to be used, made or furnished by employers and other persons, the information to be given in such forms, returns, statements and other documents, and by whom and in what language and manner and at what time or times they shall be made or furnished;
- (b) prescribing books, accounts and records to be kept and maintained by employees and other persons, the language and manner in which such books, accounts and records are to be kept and prescribing periods of preservation of such books, accounts and records;
- (c) prescribing the duties of inspectors, officers and other persons appointed or designated under this Act; and
- (d) respecting any other matter or thing not specifically mentioned in this subsection, where in the opinion of the Lieutenant-Governor in Council such provision is required to give effect to and carry out the objects of this Act.

(2) Any regulations made under this section may be limited as to time or place or both.

Regulations may be limited.

(3) Regulations made under this Act shall be published in *The Newfoundland Gazette* and shall have effect from the date of such publication or from such later date as may be stated in the regulations, and the regulations shall be laid before the Legislature within fifteen days after they are made, if the Legislature is then in session, and, if it is not, then within fifteen days after the commencement of the next ensuing session.

Publication.

PROSECUTIONS.

30. No prosecution for an offence under this Act shall be commenced except with the consent in writing of the Minister.

Consent to prosecute.



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Time does not  
run where  
Minister defers  
his consent.

**31.** Where the Minister defers his consent to the commencement of a prosecution for any offence under this Act, because the matter is then being dealt with under any of the provisions of Sections 14 to 21, the time during which the Minister's consent was deferred for that reason shall not be counted for the purposes of any provision of The Summary Jurisdiction Act or of any other Act limiting the time for making a complaint, laying an information or commencing any prosecution or other proceeding.

### APPEAL.

Appeal.

**32.—(1)** When any person is dissatisfied with an order of the Minister made under Section 21, he may appeal therefrom to a judge of the Supreme Court of Newfoundland.\*

Service of  
notice.

(2) If a person proposes to appeal under subsection (1), he shall, within thirty days after the order of the Minister from which he proposes to appeal, serve on the Minister a written notice of his intention to appeal.

Notice to set  
forth grounds  
of appeal.

(3) Every notice of appeal served under subsection (2) shall be signed by the appellant or by his solicitor or agent, and, in the notice, the grounds of the appeal shall be set forth, and the appellant shall file a copy of the notice in the office of the Registrar of the Supreme Court of Newfoundland.

Appointment  
of day for  
hearing.

(4) The appellant shall, not less than fourteen days before the hearing of the appeal, serve upon the Minister a written notice of the day appointed for the hearing.

Judge to hear  
appeal.

(5) The judge shall hear the appeal and the evidence adduced before him by the appellant and Her Majesty in a summary manner and shall decide the matter of the appeal.

Papers, etc., to  
be produced by  
Minister.

(6) The Minister shall cause to be produced before the judge on the hearing of the appeal all papers and documents in his possession affecting the matter of the appeal.

Costs.

(7) The costs of the appeal are in the discretion of the judge, and he may make an order respecting them in favour of or against Her Majesty and may fix the amount thereof.

\*

Refers to a judge of the Trial Division.  
1974, No. 57, s. 38(263(1)), Sch. C, Item 36.

LANGUAGE RIGHTS



DROITS LINGUISTIQUES





LANGUAGE RIGHTSNote:

Newfoundland, with only half percent of its population of French extraction, does not have statutes concerning language rights. For federal laws dealing with this subject, see volume 2 of this collection, Chapter I.

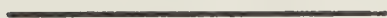
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DROITS LINGUISTIQUESNote:

Terre-Neuve ne dispose d'aucune loi provinciale sur la question des droits linguistiques, les francophones ne constituant qu'un demi-pourcent de toute la population terre-neuvienne. Quant à la législation fédérale en la matière, elle est signalée au chapitre I du volume 2 de cette collection.



NATIVE RIGHTS



DROITS DES AUTOCHTONES





## NATIVE RIGHTS

### Note:

The number of Indian bands in Newfoundland is not listed in Canada Year Book 1978/79 (see p. 162), nor does the Corpus Almanac of Canada for 1980 list the number of reserves or settlements in this province (see p. 16-16). Native rights of Inuits (Eskimos) and Indians living mainly in Labrador are protected by federal legislation, the Indian Act, reproduced in volume 2 of this collection, Chapter J. Newfoundland does not have legislation dealing with native rights.

---

## DROITS DES AUTOCHTONES

### Note:

L'Annuaire du Canada 1978-79 (p. 176) n'indique aucunement le nombre de bandes indiennes présentes à Terre-Neuve. Le Corpus Almanac of Canada de l'année 1980 (p. 16-16) ne signale pas non plus le nombre de réserves ou d'établissements dans cette province. Il n'en demeure pas moins que la législation fédérale reproduite ou signalée au chapitre J du volume 2 de la présente collection, protège les droits des autochtones, "Inuit" (Esquimaux) et Indiens qui vivent principalement au Labrador. Il n'y a cependant aucune loi terre-neuvienne qui traite des droits des autochtones.





EMERGENCY MEASURES



MESURES D' URGENCE



## EMERGENCY MEASURES

### Note:

Newfoundland does not have provincial legislation comparable with the federal War Measures Act, reproduced in volume 2 of this collection, Chapter L. The province is subject to this federal statute, and has passed its own Emergency Measures Act (R.S.N. 1970, c. 188, as amended), not reproduced here. This statute contains provisions in cases of civil disasters, or a war emergency. In cases of war, invasion of Canada or other enemy actions, it provides the Lieutenant Governor in Council with authority to issue orders and regulations having force of law, and to suspend acts of legislature, all of this for the peace, order and welfare of the province during a war emergency.

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## MESURES D'URGENCE

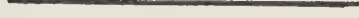
### Note:

Terre-Neuve n'a pas de loi comparable à la Loi sur les mesures de guerre adoptée par le Parlement fédéral et reproduite au chapitre L du volume 2 de cette collection. Bien que soumise à cette loi, cette province a tout de même adopté l'Emergency Measures Act (R.S.N. 1970, c. 188 et ses modifications), non reproduit ici. Cette loi prévoit notamment qu'en cas de guerre, d'invasion ou d'attaque ennemie, le lieutenant-gouverneur en conseil peut émettre des ordonnances et des règlements ayant force de lois, voire même suspendre certaines lois de la législature provinciale, dans le but d'assurer la paix, l'ordre et le bien-être dans la province.





MISCELLANEOUS



DIVERS





## COAT OF ARMS, FLAG AND EMBLEM

### Introduction:

The arms of Newfoundland were granted by royal letters patent of King Charles I dated January 1, 1637. The shield is formed by a silver cross on a red field with quarters occupied by two golden crowned lions and two silver unicorns, inspired by the royal arms. The crest over the arms is an elk, once thought living on the island, and the supporters are two armed Indians. The motto: Quaerite prime regnum Dei means "Seek first the Kingdom of God," and is taken from St. Matthew's Gospel. The use of the coat of arms is governed by the Newfoundland Coat of Arms Act, R.S.N. 1970, c. 254, as amended, reproduced below.

The flag of Newfoundland is the Royal Union Flag, known as the Union Jack, which was first proclaimed as a Royal flag of the United Kingdom in 1606. The Union Jack incorporates the flags of England (red cross of St. George on white), of Scotland (white cross of St. Andrew on dark blue), and since 1801 of Ireland (diagonal red cross of St. Patrick on white). It was adopted as the national flag of Newfoundland by a statute enacted on May 15, 1931 (S.N. 1931, c. 3; R.S.N. 1970, c.244, as amended). Discussion has been under way to adopt a new distinctive provincial flag, with hearings being held throughout the province by a Select Committee of the House of Assembly, which presented a report to the Assembly in April 1980. Consequently a bill was introduced in the Assembly and passed, namely the Provincial Flag Act, S.N. 1980, c.5, reproduced below.

In 1975, the poem "Ode to Newfoundland" was adopted as the provincial anthem, with music added in 1979, and embodied in the Provincial Anthem Act, S.N. 1979, c. 16, reproduced below.

Selected references:

Swan, Conrad, Canada: Symbols of Sovereignty, Toronto, University of Toronto Press, 1977, pp. 85-97.

Canada, Dept. of the Secretary of State, The Arms, Flags, and Emblems of Canada, Ottawa, 1978, pp. 19-22.

Perlin, A.B. "Notes and Comments on a Newfoundland Flag." (1974-75), 71 Newfoundland Quarterly, p. 3 (no. 4).

## ARMOIRIES, DRAPEAU ET EMBLÈMES

### Introduction

Les armoiries de Terre-Neuve ont été accordées par lettres patentes du roi Charles I en date du 1er janvier 1637. L'écu se compose d'une croix d'argent sur champ rouge et de quartiers sur lesquels repose un léopard d'or coiffé de la couronne royale ou une licorne d'argent. Le cimier au-dessus de l'écu est monté par un orignal, alors que deux Indiens armés composent les tenants. La devise de la province, inscrite sous l'écu, est Quaerite Prime Regnum Dei qui signifie "Cherchez d'abord le royaume de Dieu"; elle est extraite de l'Evangile de Saint-Mathieu. L'utilisation des armoiries de la province est régie par la loi intitulée Newfoundland Coat of Arms Act, R.S.N. 1970, c. 254 et ses modifications; cette loi est reproduite ci-après.

Le drapeau officiel de Terre-Neuve est le drapeau Royal Union, mieux connu sous le nom d'Union Jack, qui fut proclamé le drapeau royal du Royaume-Uni en 1606. L'Union Jack réunit le drapeau de l'Angleterre (la croix rouge de Saint-Georges sur fond blanc), celui d'Ecosse (la croix blanche de Saint-André sur champ outremer) et, depuis 1801, celui d'Irlande (la croix rouge de Saint-Patrice posée en diagonale sur fond blanc). C'est par une loi du 15 mai 1931 (S. N. 1931, c. 3; R.S.N. 1970, c. 244 et ses modifications) que l'Union Jack fut adopté comme drapeau national de Terre-Neuve. Des démarches furent par la suite entreprises afin de faire adopter un drapeau provincial distinctif. Une commission de l'Assemblée législative fut formée à cette fin. Après avoir tenu des auditions à travers la province, ce comité déposa son rapport à l'Assemblée en avril 1980. C'est à la lumière de ce rapport que fut sanctionné le Provincial Flag Act (S.N. 1980, c. 5), reproduit ci-après.

En 1975, le poème "Ode to Newfoundland" fut reconnu comme hymne national. En 1979, on ajouta la musique et on incorpora le tout à la loi intitulée Provincial Anthem Act, S.N. 1979, c. 16, reproduite ci-après.



Sources choisies

Swan, Conrad, Canada: Symbols of Sovereignty, Toronto, University of Toronto Press, 1977, pp. 85-97.

Canada, Secrétariat d'état, Les armoiries, drapeaux et emblèmes du Canada, Ottawa, Approvisionnement et Services Canada, 1978, pp. 19-22 .

Perlin, A.B., "Notes and Comments on a Newfoundland Flag", (1974-75)71 Newfoundland Quarterly, p. 3.

**An Act Respecting the Use of the Coat of Arms  
of Newfoundland.**

R.S.N. 1970, c.254

with amendments to date, including 1979, c.49,  
Schedule D, Item 7

et ses modifications a jour, y inclus 1979, c.49,  
Schedule D, Item 7

- |  |  |
|--|--|
| <p><b>1.</b> This Act may be cited as the Newfoundland Coat of Arms Act.</p>   | Short title.   |
| <p><b>2.—(1)</b> The Armes and Ensignes of Newfoundland are the Armes and Ensignes described in the document set forth in Schedule “A”, a copy of which is deposited in the Department of Tourism, Recreation and Culture.</p>   | Armes and Ensignes of Newfoundland                           |
| <p><b>(2)</b> A pictorial representation of the Armes and Ensignes of Newfoundland, printed in black and white, is set forth in Schedule “B”. 1973, No.18, s.35(1), Sch.B, Item 6; 1979, c.49, Sch.D, Item 7.</p>  | Idem.  |
| <p><b>3.</b> The Armes and Ensignes of Newfoundland referred to in Section 2 may for all purposes be called the Coat of Arms of Newfoundland.</p>  | Coat of Arms of Newfoundland.                                |
| <p><b>4.</b> Except with express permission granted by order of the Lieutenant-Governor in Council after the date of commencement of this Act, no person other than the Government of Newfoundland shall, subject to Section 5, assume or use for any purpose the Coat of Arms of Newfoundland or any design in imitation thereof or calculated to deceive by its resemblance thereto or any paper or other material upon which the Coat of Arms of Newfoundland or any design in imitation thereof or calculated to deceive by its resemblance thereto is stamped, engraved, printed or otherwise marked.</p> | Unauthorized use of Coat of Arms of Newfoundland prohibited. |
| <p><b>5.</b> Where permission for the use of the Coat of Arms of Newfoundland has, before the thirty-first day of March, 1957, been granted to any person, if the period for which that use might be made under the permission so granted has not ter-</p>   | Termination of former permission.                            |

## NEWFOUNDLAND COAT OF ARMS ACT

minated before the date of commencement of this Act that period shall be terminated on the thirty-first day of December, 1957, and thereafter no use of the Coat of Arms of Newfoundland shall be made by virtue of the permission so granted unless before the thirty-first day of December, 1957, permission is granted under Section 4 for the continued use of the Coat of Arms of Newfoundland by that person.

Offence and  
penalty.

6. Every person who contravenes any of the provisions of this Act is guilty of an offence and liable on summary conviction to a fine not exceeding one hundred dollars for every day during which the offence continues and in default of payment thereof to imprisonment for a period not exceeding three months.

## SCHEDULE A

*To all and singular* unto whome these present letters Pattents shall come Sr John Borough, Knt. Garter principall King of Arms of Englishmen sendeth greeting *Whereas* our dread Souveraigne Lord King Charles by letters Pattents under the great seale of England, dated at Westmr. the 13th day of November in the 13th yeare of his happy Raigne did give grant and confirm to the right Hoble James, Marquess Hamilton, Maister of his horse, Phillip Earle of Pembroke, & Montgomery, Lord Chamberlaine of his Household and Henry Earle of Holland, Chief Justice in Eyre of all his Forests, Chaces and Parkes of the South side of the River of Trent and to Sr David Kirk, Knt one of the Gentlemen of his privy Chamber, all that whole Continent Island or Region comonly called NEWFOUNDLAND in manner and forme as by the said Letters Pattents more at large it doth and may appeale. *And Whereas* for the greater honor and splendor of that Countrey and the people therein inhabiting It is and will be necessary that there be pper and peculiar Armes thereunto belonging to be used in all such cases as Armes are wont to be by other nations & countries. Upon the request unto me made by the above mentioned right hoble James Marquess Hamilton, Phillip Earle of Pembroke & Montgomery & Henry Earle of Holland and Sr David Kirk, Knt. that would devise and sett forth certain Ensignes of Armes to be for ever used as the pper Armes & peculiar Ensignes of that Country. I have accordingly for the purpose before recited devised sett



NEWFOUNDLAND COAT OF ARMS  
ACT

forth and contrived the Armes & Ensignes hereafter described. That is to say Gules a Grosse Argent In the first Quarter of the Escoccheon a Lyon Passant gardant Crowned Or In the second an Unicorne passant of the second armed maned and unguled of the third gorged with a Crowne whereunto is affixed a chaine passing between his fore leggs and reflexed over his back of the last. In the third as in the second In the fourth as in the first And for the Crest Upon an Healme Mantled Gules doobled Argent and a Wreath Or & Gules an Elke passant pper The Escoccheon supported by two Savages of the Clyme pper armed and apparaled according to their Guise when they goe to Warre And Under all in an Escroll this Motto Quaerite prime Regnum Dei as in the Margent more plainly is depicted. *In Witness* whereof I the said Sr John Borough Knt Garter principal! King of Armes of Englishmen have unto these presents affixed the Seale of myne office and subscribed my name. Dated the first day of Jan. in the 13th yeare of the Raigne of our dread Souveraigne Lord Charles, by the grace of God of England, Scotland, France and Ireland King Defender of the Faith &c And in the yeare of Grace 1637.

SCHEDULE B





AN ACT TO ADOPT A FLAG FOR THE PROVINCE

S.N. 1980, c.5

WHEREAS it is deemed desirable to adopt a distinctive provincial flag;

AND WHEREAS a Select Committee of the House of Assembly was appointed to enquire into and to hear evidence in all matters relating to the adoption of a flag for the province;

AND WHEREAS the Select Committee on the Flag met and held public hearings in twenty-six communities throughout the province and received many design proposals;

AND WHEREAS it is deemed desirable that the design of the provincial flag be the design unanimously recommended in the Report of the Select Committee on the Flag, which was tabled in the House of Assembly on April 29, 1980;

Be it therefore enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title                      1. This Act may be cited as The Provincial Flag Act.

Flag adopted

2.(1) The flag described and illustrated in the Schedule is adopted as the flag of the province.

(2) The provincial flag is more particularly described and illustrated in accordance with the dimensions and specifications set forth in an order of the Lieutenant-Governor in Council, such order bearing the drawings, colours and other particulars of the flag shall be deposited in the Department of Tourism, Recreation and Culture.

RSN 1970 c.244  
Rep.

3. The National Flag Act is repealed.

## SCHEDULE

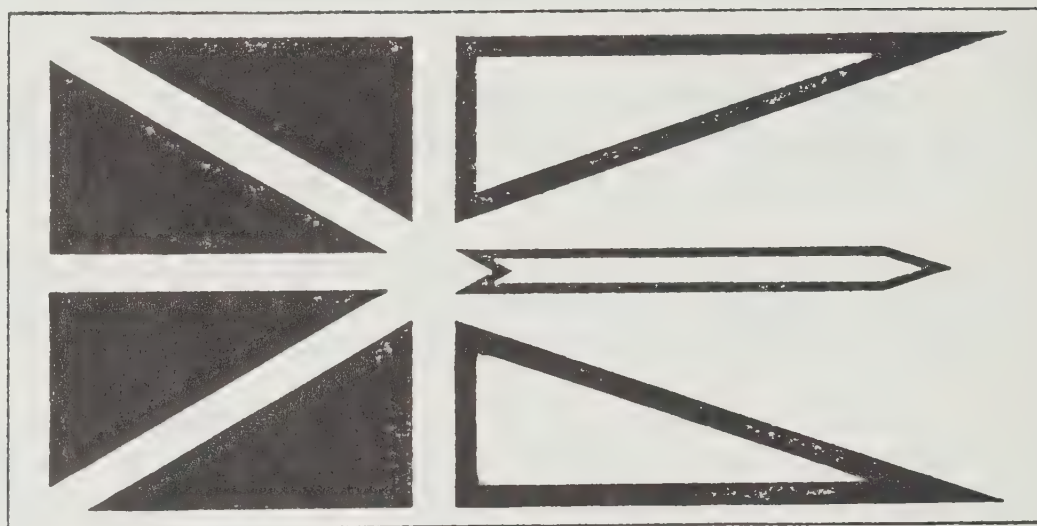
1. Description:

A white flag as illustrated below of the proportion two by length and one by width bearing four blue triangles on that half of the flag next to the staff, with two triangles bordered in red on that half of the flag in the fly and bearing a golden arrow bordered in red extending from the middle and pointing to the fly of the flag.



The Provincial Flag Act

2. Illustration:



---

## AN ACT TO ADOPT AN ANTHEM FOR THE PROVINCE

S.N. 1979, c.16

WHEREAS it is deemed desirable to adopt a provincial anthem;

AND WHEREAS it is deemed appropriate to adopt as the provincial anthem the words and music of Newfoundland An Ode, commonly called the Ode to Newfoundland:

BE IT THEREFORE enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short  
title

1. This Act may be cited as The Provincial Anthem Act.

Words adopted

2. There is hereby adopted as the words for the anthem of the province the words commonly used with the Ode to Newfoundland, written by Sir Cavendish Boyle, Governor of Newfoundland from 1901 to 1904.

Music adopted

3. There is hereby adopted as the music for the anthem of the province the music that is commonly used with the Ode to Newfoundland. This music was composed by Sir C. Hubert H. Parry and approved and officially recognized for the Ode to Newfoundland by Minute of the Committee of the Honourable the Executive Council of Newfoundland on the 20th day of May, 1904, that directed that the music be printed and copyrighted.

Words and  
music

4. The words and music as set out in the Schedule to this Act are designated as the provincial anthem.

1975 No. 27  
Rep.

5. The Provincial Anthem Act, 1975 is repealed.

Provincial Anthem Act

SCHEDULE  
ODE TO NEWFOUNDLAND

*Spiritoso.*

1 When sun rays crown thy pine-clad hills And Sum-mer spreads her

*Spiritoso.*

*Allargando.*

hand, When sil-vern voi-ces tune thy rills, We love thee, smi-ling

*Allargando.*

*rit.*

land, we love thee, we love thee, we love thee, smi-ling land.

*rit.*

Provincial Anthem Act

## 1.

When sun rays crown thy pine-clad hills  
 And Summer spreads her hand,  
 When silvern voices tune thy rills,  
 We love thee, smiling land.

Refrain

We love thee, we love thee,  
 We love thee, smiling land.

## 2.

When spreads thy cloak of shimmering white  
 At Winter's stern command,  
 Through shortened day and starlight night,  
 We love thee, frozen land.

Refrain

We love thee, we love thee,  
 We love thee, frozen land.

## 3.

When blinding storm gusts fret thy shore,  
 And wild waves lash thy strand;  
 Though spindrift swirl and tempest roar  
 We love thee, wind-swept land.

Refrain

We love thee, we love thee,  
 We love thee wind-swept land.

## 4.

As loved our fathers, so we love,  
 Where once they stood we stand;  
 Their prayer we raise to Heaven above,  
 God guard thee, Newfoundland.

Refrain

God guard thee, God guard thee,  
 God guard thee, Newfoundland.

---









ONTARIO

# CONSTITUTIONS OF CANADA

Federal and Provincial

---

# LES CONSTITUTIONS DU CANADA

Fédérale et Provinciales

Edited and Annotated by  
CHRISTIAN L. WIKTOR  
&  
GUY TANGUAY

PROVINCES

*Issued December 1983*

1984

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R.S.O. 1980, c. 91 et ses modifications  
(Extraits) T 287
  4. Loi sur les caisses populaires et les "credit  
unions",  
L.R.O. 1980, c. 102 et ses modifications  
(Extraits) T 289

d. Langue de l'administration municipale

1. Municipal Act,  
R.S.O. 1980, c. 302 et ses modifications  
(Extraits) T 290
2. Municipal Elections Act,  
R.S.O. 1980, c. 308 et ses modifications  
(Extraits) T 292
3. Regional Municipality of Ottawa-Carleton Act,  
R.S.O. 1980, c. 439 et ses modifications  
(Extraits) T 293
4. Regional Municipality of Sudbury Act,  
R.S.O. 1980, c. 441 et ses modifications  
(Extraits) T 294
5. Loi sur les régies locales des services publics,  
L.R.O. 1980, c. 252  
(Extraits) T 295

e. Langue du travail

1. Loi sur la santé et sécurité au travail,  
L.R.O. 1980, c. 321  
(Extraits) T 296

( 8) Droits des autochtones T 300

( 9) Mesures d'urgence T 304

(10) Divers

a. Armoiries, drapeau et emblèmes T 308

Introduction T 308

1. Armoiries T 309

2. Flag Act, R.S.O. 1980, c. 169 T 310

## INTRODUCTION



## INTRODUCTION





## ONTARIO

### Introduction

Ontario is one of the four original provinces of the Canadian Confederation created in 1867. Its constitutional history is closely connected with that of the province of Quebec. Indeed, the territory of New France ceded by France to Great Britain by the Treaty of Paris of 1763, contained the southern parts of the actual territories of Ontario and Quebec. This new British colony was named the Province of Quebec until 1791. The Constitutional Act, 1791, 31 George III, c. 31 (U.K.), divided this colony into two separate provinces, Upper Canada, which became Ontario, and Lower Canada, now known as Quebec. Each of these two provinces were vested with legislative power, consisting of two houses, that is, a nominated Legislative Council, and an elected House of Assembly. In addition, in each province a Governor or Lieutenant Governor and a nominated Executive Council exercised executive power, as well as some judicial functions. In pursuance of another British statute, The Act of Union, 1840, 3-4 Victoria, c. 35 (U.K.), the provinces of Upper and Lower Canada were reunited into one province under the name of Province of Canada. The government of this province was entrusted to a Governor advised by an Executive Council. The executive power was also vested with some judicial functions. The legislative power, on the other hand, consisted of a nominated chamber, the Legislative Council, and an elected chamber, the Legislative Assembly. Responsible government was introduced in this province in 1848. The province of Canada entered Confederation in 1867, together with New Brunswick and Nova Scotia, and was divided into two provinces, Ontario and Quebec.

The present territory of Ontario has a total area of 412,582 square miles or 1,068,582 km<sup>2</sup>. The province is bounded on the north by the Hudson Bay and the James Bay, on the east by Quebec, on the south by the United States and the Great Lakes, and on the west by Manitoba. The boundaries of Ontario are discussed further in volume 1 of

this collection, pp. C237, and subs. Ontario, with its capital in Toronto, has a population of 8,625,107 (1981 census), of whom 77.4% claim English as their mother tongue, 5.5% French, and 17% another language. The province is represented in the federal Parliament by 24 Senators appointed to the Senate, and 95 members elected to the House of Commons. On the provincial level, the Legislative Assembly has 125 members.

Subjects treated in this chapter follow the arrangement in the federal volumes 1 and 2, and are listed in the table of contents above.

#### Selected references:

##### General studies:

- MacDonald, Donald C., Government and Politics of Ontario, Toronto, Macmillan of Canada, 1975, 370 p.
- Schindeler, F.F., Responsible Government in Ontario, Toronto, University of Toronto Press, 1969, 295 p. (Canadian Government Series, No. 16)
- Gingras, François-Pierre, "Ontario," in Bellamy, David J., and others, The Provincial Political Systems: Comparative Essays, Toronto, Methuen, 1976, pp. 31-45.
- Risk, R.C.B., "The Law and the Economy in Mid-Nineteenth Century Ontario: A Perspective," in Flaherty, David H., ed., Essays in the History of Canadian Law, Toronto, University of Toronto Press, 1981, vol.1, pp. 88-131; also published in (1977), 27 University of Toronto Law Journal 403-438.

##### Reference works:

- Canada Yearbook 1980-81, Ottawa, Supplies and Services Canada, 1981, x, 1004 p.
- Encyclopedia of Canada, Toronto, Grolier of Canada, c1975, pp.21-52.

## ONTARIO

### Introduction

L'Ontario est l'une des quatre provinces fondatrices de l'union fédérale de 1867. Son histoire constitutionnelle est étroitement liée à celle de la Province de Québec. En effet, le territoire de la Nouvelle-France, que la France céda à la Grande-Bretagne par le Traité de Paris de 1763, renfermait alors la partie sud des territoires actuels de l'Ontario et du Québec. Cette nouvelle colonie britannique reçut le nom de Province de Québec qu'elle conserva jusqu'en 1791. L'Acte constitutionnel de 1791, 31 George III, c. 31 (R.-U.), divisa cette colonie en deux provinces distinctes, celle du Haut-Canada, devenue depuis l'Ontario, et celle du Bas-Canada, appelée aujourd'hui le Québec. Chacune des deux provinces fut dotée d'un pouvoir législatif comprenant deux chambres, soit un conseil législatif nommé et une chambre d'assemblée électorale. Par ailleurs, dans chaque province, un gouverneur ou un lieutenant-gouverneur et son conseil exécutif nommé exerçaient le pouvoir exécutif tout en remplissant certaines fonctions judiciaires. Par une autre loi britannique, soit l'Acte d'Union, 1840, 3-4 Victoria, c. 35 (R.-U.), le Haut-Canada et le Bas-Canada furent réunis pour ne former qu'une seule et même province sous le nom de Province du Canada. Le gouvernement de cette province fut confié à un gouverneur assisté d'un conseil exécutif; le pouvoir exécutif se voyait également attribué certaines fonctions judiciaires. De son côté, le pouvoir législatif se composait d'une chambre nommée, le Conseil législatif, et d'une chambre élue, l'Assemblée du Canada. C'est sous l'Union, plus précisément en 1848, que fut instauré le gouvernement responsable. Admise dans la Confédération dès 1867 avec le Nouveau-Brunswick et la Nouvelle-Ecosse, la Province du Canada fut divisée en deux provinces, soit l'Ontario et le Québec.

Le territoire actuel de l'Ontario occupe une superficie totale de 412, 582 milles carrés ou 1,068, 582 kilomètres carrés. Il est délimité au nord par la Baie d'Hudson et la Baie James, à l'est par le Québec, au sud par les Etats-Unis et les Grands Lacs et à l'ouest par le Manitoba. Il est d'ailleurs question des frontières de l'Ontario aux pages C238 et suivantes du volume 1 de cette collection. Cette province, dont la capitale est Toronto, a une population de 8,625,107 (recensement 1981).



La répartition de la population selon la langue maternelle est la suivante: 77.4% l'anglais, 5.5% le français et 17% d'autres langues. Au Parlement du Canada, la province est représentée par 24 sénateurs à la Chambre haute et par 95 députés à la Chambre des communes. Au niveau provincial, l'Assemblée législative se compose de 125 députés.

Les sujets traités dans le présent chapitre sont classés suivant le plan retenu dans les volumes 1 et 2 portant sur la constitution fédérale et sont identifiés dans la table des matières qui précède.

### Sources choisies

#### Etudes générales:

- MacDonald, Donald C. (ed), Government and Politics of Ontario, Toronto, Macmillan of Canada, 1975, 370 p.
- Schindeler, F.F., Responsible Government in Ontario, Toronto, University of Toronto Press, 1969, 295 p.
- Gingras, François-Pierre, "Ontario" dans David J. Bellamy et al, The Provincial Political Systems: Comparative Essays, Toronto, Methuen, 1976, pp. 31-45
- Risk, R.C.B., "The Law and the Economy in Mid-Nineteenth-Century Ontario: a Perspective" dans David H. Flaherty (ed.), Essays in the History of Canadian Law vol. 1, Toronto, University of Toronto Press, 1981, pp. 88-131
- Cet article a aussi été publié dans (1977) 27 University of Toronto Law Journal, pp. 403-438

#### Ouvrages de référence:

- Annuaire du Canada 1980-81, Ottawa, Approvisionnement et Service Canada, 1981, 1119 p.
- Encyclopedia Canadiana, Toronto, Grolier of Canada, c1975, pp. 21-52

GENERAL CONSTITUTIONAL ACTS



LOIS CONSTITUTIONNELLES GÉNÉRALES



## GENERAL CONSTITUTIONAL ACTS

### Introduction

In addition to imperial statutes reproduced in volume 1, Chapter A of this collection, general constitutional provisions applicable to Ontario are to be found in sections 19 and 155 of the Courts of Justice Act, 1984, S.O. 1984, c. 11, reproduced below in the chapter on the "Judicial Power." Section 19 provides the Lieutenant Governor in Council with power to refer any question, constitutional or other, to the Court of Appeal of Ontario for its consideration. Section 155 confirms the jurisdiction of the Federal Court of Canada in any controversy between Ontario and Canada or any other province.



## LOIS CONSTITUTIONNELLES GÉNÉRALES

### Introduction

Outre les lois impériales reproduites au chapitre A du volume 1 de la présente collection, les seules dispositions constitutionnelles d'ordre général applicables à l'Ontario sont les articles 19 et 155 du Courts of Justice Act, 1984, S.O. 1984, c. 11, dont le texte est reproduit plus loin au chapitre "Pouvoir judiciaire". L'article 19 permet au lieutenant-gouverneur en conseil de référer toute question, constitutionnelle ou autre, à la considération de la Cour d'appel de l'Ontario. L'article 155 confirme la compétence de la Cour fédérale du Canada dans tout litige entre l'Ontario et l'état fédéral ou toute autre province.

INTERGOVERNMENTAL RELATIONS



RELATIONS INTERGOUVERNEMENTALES



## INTERGOVERNMENTAL RELATIONS

### Introduction

The province of Ontario has conferred the responsibility in matters dealing with federal-provincial, inter-provincial and international relations to a special department, with power to make recommendations to the provincial Executive Council and to enforce the approved policies. The statute creating it is the Ministry of Intergovernmental Affairs Act, reproduced below.

In some of its statutes, the provincial legislator of Ontario provides power to enter into agreements with the government of Canada or with other provinces in such matters as agriculture, education, social security, health services, taxation, natural resources, and the exchange of statistical information.

Intergovernmental fiscal relations are discussed in volume 2 of this collection, pp. D167, and subs.

### Selected references:

McDougall, A.K., and Westmacott, M.W., "Ontario in Canadian Federation," in MacDonald, Donald C., Government and Politics of Ontario, Toronto, MacMillan, 1975, pp. 195-208.

Martin, Joe, The Role and Place of Ontario in the Canadian Confederation, Toronto, Ontario Economic Council, 1974, 68 p. (The Evolution of Policy in Contemporary Ontario Series, No. 4)

Ontario Economic Council, Issues and Alternatives - 1977: Intergovernmental Relations, Toronto, Ontario Economic Council, 1977, 163 p.



## RELATIONS INTERGOUVERNEMENTALES

### Introduction

L'Ontario a confié à un ministère particulier la responsabilité de faire des recommandations au Conseil exécutif de la province en matière de relations fédérales-provinciales, inter-provinciales et internationales et d'appliquer les diverses politiques adoptées en ces matières. La loi constitutive de ce ministère s'intitule Ministry of Intergovernmental Affairs Act et est reproduite ci-après.

Le législateur ontarien autorise, dans certaines de ses lois, la conclusion d'accords avec le gouvernement canadien et avec les autres gouvernements provinciaux dans des domaines aussi variés que l'agriculture, l'éducation, la sécurité sociale, les services de santé, la fiscalité, les richesses naturelles et l'échange de renseignements statistiques. En ce qui regarde les relations fiscales fédérales-provinciales, elles sont couvertes aux pages D169 et suivantes du volume 2 de cette collection.

### Sources choisies

- McDougall, A.K. et Westmacott, M.W., "Ontario in Canadian Federation", dans Donald C. MacDonald, Government and Politics of Ontario, Toronto, Macmillan, 1975, pp. 195-208.
- Martin, Joe, The Role and Place of Ontario in the Canadian Confederation, Toronto, Ontario Economic Council, 1974 68 p. (The Evolution of Policy in Contemporary Ontario, Series Numer 4)
- Ontario Economic Council, Issues and Alternatives - 1977: Intergovernmental Relations, Toronto, Ontario Economic Council, 1977, 163 p.

# Ministry of Intergovernmental Affairs Act

R.S.O. 1980, c. 283

Amended by 1981, c. 19, s. 15

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Modifié par 1981, c. 19, art. 15

## 1. In this Act,

Interpre-  
tation

- (a) "Deputy Minister" means the Deputy Minister of Intergovernmental Affairs;
- (b) "intergovernmental affairs" means any relationship between the Government of Ontario and the Government of Canada or a minister, agency or official thereof, the government of another province or territory of Canada or any minister, agency or official thereof, or the government of a foreign country or state or any agency thereof;
- (c) "Minister" means the Minister of Intergovernmental Affairs;
- (d) "Ministry" means the Ministry of Intergovernmental Affairs;
- (e) Repealed 1981, c. 19, s. 15(2).  
1978, c. 64, s. 1; 1981, c. 19,  
s.s. 1 and 2.

2. The ministry of the public service known as the Ministry of Intergovernmental Affairs is continued. 1978, c. 64, s. 2, *revised*. Ministry  
continued

3. The Minister shall preside over and have charge of the Ministry and has power to act for and on behalf of the Ministry. 1978, c. 64, s. 3. Minister  
to have  
charge

4.—(1) The Lieutenant Governor in Council may authorize a seal for the Minister and prescribe its use on documents. Seal

(2) The seal may be reproduced by engraving, lithographing, printing or any other method of mechanical reproduction, and when so reproduced has the same force and effect as if manually affixed. 1978, c. 64, s. 4. Mechanical  
reproduction  
of seal

## MIN. OF INTERGOVERNMENTAL AFFAIRS

Federal-provincial, inter-provincial and international affairs

5.—(1) The Minister is responsible for making recommendations to the Executive Council on the programs and activities of the Government of Ontario and its agencies in relation to federal-provincial, inter-provincial and international affairs.

Municipal affairs

(2) Repealed 1981, c. 19, s. 15(3).

Orders establishing procedures

(3) The Lieutenant Governor in Council may, on the recommendation of the Minister, make orders establishing procedures to achieve the objectives set out in subsection (1) and, without limiting the generality of the foregoing, such orders may provide for procedures respecting the execution, by the Government of Ontario, of agreements or classes of agreements with other governments.

Administration of Acts

(4) The Minister is responsible for the administration of this Act, and the Acts that are assigned to him by the Legislature or by the Lieutenant Governor in Council. 1978, c. 64, s.5; 1981, c. 19, ss. 15(3), (4) and (5).

Deputy Minister

6.—(1) The Lieutenant Governor in Council shall appoint a Deputy Minister of Intergovernmental Affairs who shall be the deputy head of the Ministry.

Duties of Deputy Minister

(2) Under the direction of the Minister, the Deputy Minister shall perform such duties as the Minister may assign or delegate to him.

Delegation of powers and duties of Minister

(3) Any power or duty conferred on the Minister by this or any other Act may be delegated by him in writing, subject to such limitations, conditions and requirements as the Minister may set out in the delegation, to the Deputy Minister or to any officer of the Ministry who may act for him in his place and stead, and when the Deputy Minister or such other officer acts in the place and stead of the Minister, it shall be presumed conclusively that he acted in accordance with such delegation.

Effect of R.S.O. 1980, c. 147

(4) Notwithstanding the *Executive Council Act*, a contract or an agreement made by a person empowered to do so under subsection (3) has the same effect as if made and signed by the Minister. 1978, c. 64, s. 6.

## MIN. OF INTERGOVERNMENTAL AFFAIRS

7.—(1) No action or other proceeding for damages shall be instituted against the Deputy Minister, or any officer or employee of the Ministry, or anyone acting under his authority for any act done in good faith in the execution or intended execution of his duty, or for any alleged neglect or default in the execution in good faith of his duty. Protection  
from  
personal  
liability

(2) Subsection (1) does not, by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (1) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (1) had not been enacted. Idem  
R.S.O. 1980,  
c. 393 1978, c. 64, s. 7.

8. Repealed 1981, c. 19, s. 15(6).

## SCHEDULE

Repealed 1981, c. 19, s. 15(7).





EXECUTIVE POWER



POUVOIR EXÉCUTIF



## EXECUTIVE POWER

### Introduction

The executive power in Ontario derives its statutory authority from the Constitution Act, 1867 (formerly B.N.A. Act, 1867), sections 58 to 63, and 65 to 67, and from two provincial statutes: the Lieutenant Governor Act, R.S.O. 1980, c. 238, and the Executive Council Act, R.S.O. 1980, c. 147, as modified. The last two statutes are reproduced below, while the Constitution Act, 1867 is reproduced in volume 1 of this collection, pp. A13, and subs.

According to these statutory provisions and constitutional conventions, the executive power in Ontario is vested in the Lieutenant Governor advised by an Executive Council. The Lieutenant Governor is the representative of the Sovereign in right of the province. He is appointed by the Governor General in Council for a period of five years. The Executive Council, also known as the Cabinet, consists of the Ministers of the Crown, headed by the Premier of the province, who is the leader of the political party having the confidence of the Legislative Assembly. Ministers are appointed by the Lieutenant Governor on the advice of the Premier of the province. In Ontario, the Executive Council is assisted by two boards, the Policy and Priorities Board, and the Management Board, whose organization, powers and duties are described in the following two statutes reproduced below: 1) Policy and Priorities Board of Cabinet Act, R.S.O. 1980, c. 382, and 2) Management Board of Cabinet Act, R.S.O. 1980, c. 254.

The functions and powers of the Executive of Ontario are similar to those of the components of the federal executive power as described in volume 2 of this collection, Chapter E. The general observations contained in the introduction (pp. E5, and E6), and in sections on the Governor General (p. E23), the Lieutenant Governor (p. E39), and the Cabinet (pp. E47, and E48), apply mutatis mutandis to this chapter as well. In effect it is the Premier and his Cabinet who, according to constitutional



conventions, exercise the executive power while the Lieutenant Governor remains the nominal head of the provincial executive.

The province of Ontario does not have a general statute regulating the organization of the Executive, which would describe the functions, powers and duties of Ministers appointed by the Lieutenant Governor pursuant to section 2 of the Executive Council Act cited above. This section 2 lists various ministries which can be created, and also provides that the Lieutenant Governor may by order in council prescribe their functions. Existing departments can be located in the Government of Ontario Telephone Directory, or in the looseleaf edition of the Corpus Administrative Index. It should also be mentioned that government departments and agencies are submitted to the scrutiny of the Ombudsman as defined in the Ombudsman Act, R.S.O. 1980, c. 325.

#### Selected references:

- Bryden, Kenneth, "Executive and Legislature in Ontario: A Case Study on Government Reform", (1975), 18 Canadian Public Administration 235-252.
- Fleck, James D., "Restructuring the Ontario Government", (1973), 16 Canadian Public Administration 55-68.
- Mallory, J.R., "Restructuring the Government of Ontario; A Comment," (1973), 16 Canadian Public Administration 69-72.
- Schindeler, F.F., Responsible Government of Ontario, Toronto, University of Toronto Press, 1968, 295 p. (Canadian Government Series, No. 16). See Chapter 3: The Executive Branch (pp. 28-80).
- Szablowski, George J., "Policy-Making and Cabinet: Recent Organizational Engineering at Queen's Park," in MacDonald, Donald C., ed., Government and Politics of Ontario, Toronto, Macmillan, 1975, pp. 113-133.

## POUVOIR EXÉCUTIF

### Introduction

En Ontario, le pouvoir exécutif trouve son fondement législatif dans les articles 58 à 63, 65 à 67 de la Loi constitutionnelle de 1867 (autrefois l'A.A.N.B., 1867), et dans deux lois provinciales intitulées Lieutenant Governor Act (R.S.O. 1980, c. 238) et Executive Council Act (R.S.O. 1980, c. 147 et ses modifications). Ces deux dernières lois sont reproduite ci-après, alors que la Loi constitutionnelle de 1867 est déjà rapportée aux pages A13 et suivantes du volume 1 de cette collection.

Conformément à cette législation et à la pratique constitutionnelle, le pouvoir exécutif ontarien est dévolu au lieutenant-gouverneur assisté d'un conseil exécutif. Le lieutenant-gouverneur est le représentant de la Reine dans la province. Il est nommé par le gouverneur général en conseil pour une période de cinq ans. Quant au conseil exécutif connu également sous le nom de cabinet, il se compose des ministres de la Couronne sous la direction du premier ministre de la province; d'après l'usage, le poste de premier ministre échoit généralement au chef du parti politique majoritairement élu à l'Assemblée législative. Quant aux divers ministres, ils sont nommés par le lieutenant-gouverneur sur l'avis du premier ministre provincial. En Ontario, le cabinet des ministres est appuyé par deux conseils, le conseil sur les politiques et priorités et le conseil de gestion, dont la structure et les pouvoirs sont respectivement décrits dans les deux lois suivantes reproduites plus loin, savoir: Policy and Priorities Board of Cabinet Act, R.S.O. 1980, c. 382 et Management Board of Cabinet Act, R.S.O. 1980, c. 254.

Le pouvoir exécutif ontarien exerce sensiblement les mêmes fonctions que celles des diverses composantes du pouvoir exécutif fédéral dont il est question au chapitre E du volume 2 de la présente collection. Les observations qui sont faites dans l'introduction de ce chapitre (pp. E7 et E8), ainsi que dans les paragraphes sur le gouverneur général (p. E25), sur le lieutenant-gouverneur (pp. E40 et suivantes) et sur le cabinet des ministres (pp. E49 et E50), s'appliquent mutatis mutandis au présent chapitre. En réalité, comme le veut la pratique constitutionnelle, c'est le premier ministre et son cabinet qui exercent le pouvoir exécutif, tandis que le lieutenant-gouverneur demeure le chef nominal de l'exécutif provincial.

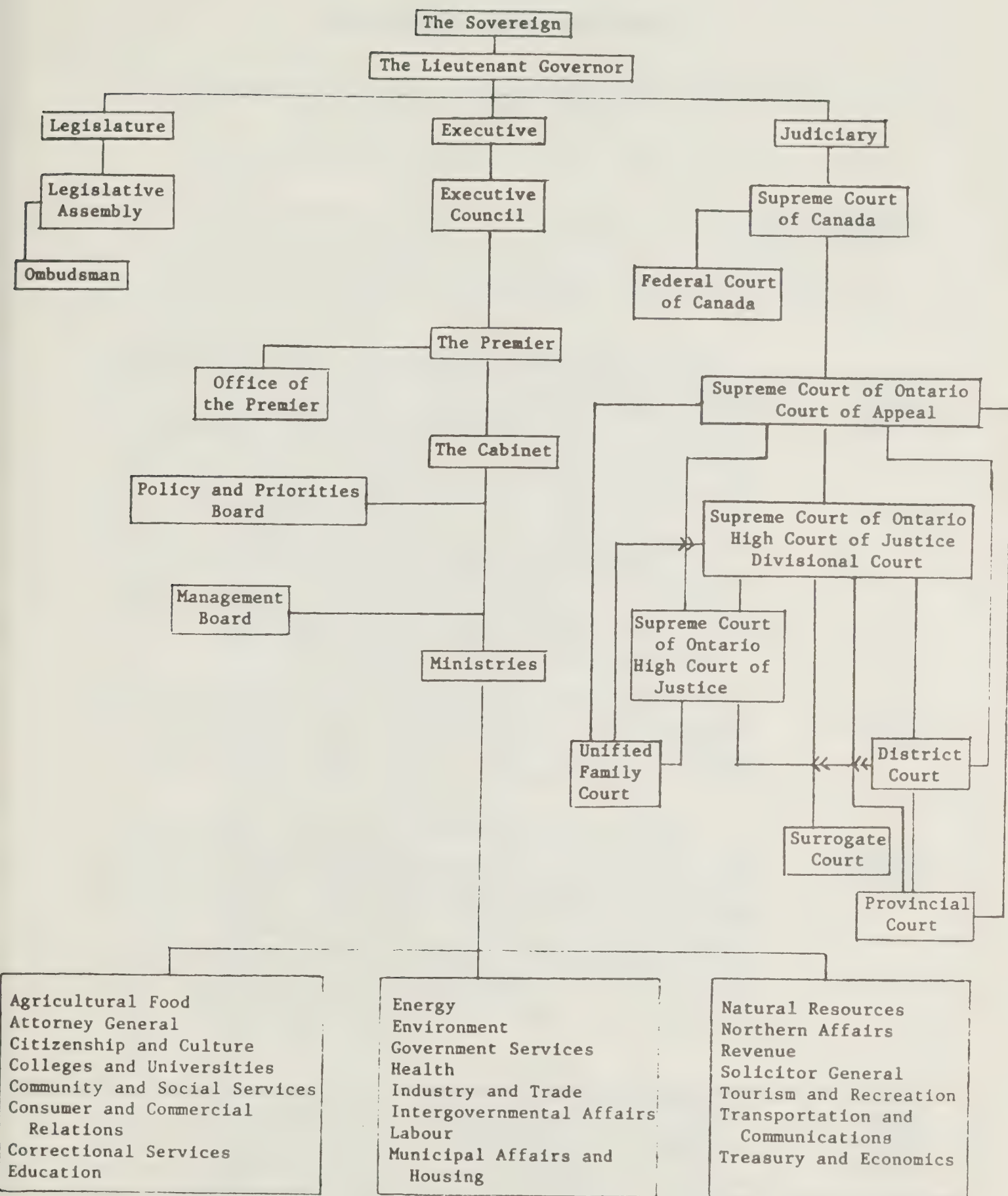
L'Ontario n'a aucune loi-cadre qui décrive l'organisation du pouvoir exécutif ou définisse les fonctions, pouvoirs et devoirs des ministres nommés par le lieutenant-gouverneur sous l'autorité de l'article 2 du Executive Council Act déjà cité. Cet article 2 fait mention des divers ministères qui peuvent être créés et stipule que le lieutenant-gouverneur peut, par arrêté en conseil, prescrire les fonctions des ministères établis. Pour repérer les ministères existants, on peut consulter le Government of Ontario Telephone Directory ou le service de mises à jour intitulé Corpus Administrative Index. Les ministères, ainsi que les régies et sociétés d'état de l'Ontario, sont d'ailleurs soumis au pouvoir d'enquête et de recommandation de l'ombudsman tel que défini dans l'Ombudsman Act, R.S.O. 1980, c. 325.

### Sources choisies

- Bryden, Kenneth, "Executive and Legislature in Ontario: a Case Study on Governmental Reform", (1975) 18 Administration publique du Canada/Canadian Public Administration, pp. 235-252.
- Fleck, James D., "Restructuring the Ontario Government", (1973) 16 Administration publique du Canada/Canadian Public Administration, pp. 55-68.
- Mallory, J.R., "Restructuring the Government of Ontario; a Comment", (1973) 16 Administration publique du Canada/Canadian Public Administration, pp. 69-72.
- Schindeler, F. F., Responsible Government of Ontario, Toronto, University of Toronto Press, 1968, 295 p. (Canadian Government Series, 16). Consulter le chapitre 3, pp. 28-80: The Executive Branch
- Szablowski, George J., "Policy-Making and Cabinet: Recent Organizational Engineering at Queen's Park" dans Donald C. MacDonald (ed.), Government and Politics of Ontario, Toronto, Macmillan, 1975, pp. 113-133.



## The Government of Ontario





Lieutenant Governor Act

R.S.O. 1980, c. 238

Powers  
vested in  
Lieutenant  
Governor

1867, c. 3  
(Imp.)

1. In matters within the jurisdiction of the Legislature, all powers, authorities and functions that, in respect of like matters, were vested in or exercisable by the governors or lieutenant governors of the several provinces now forming part of Canada or any of the provinces, under commissions, instructions or otherwise, at or before the passing of *The British North America Act, 1867*, are, so far as the Legislature has power thus to enact, vested in and exercisable by the Lieutenant Governor or Administrator for the time being of the Province of Ontario, in the name of Her Majesty or otherwise as the case requires, subject always to the Royal Prerogative as heretofore. R.S.O. 1970, c. 244, s. 1.

Power to  
remit  
sentences

2. Section 1 shall be deemed to include the power of commuting and remitting sentences for offences against the laws of Ontario or offences over which the legislative authority of the Province of Ontario extends. R.S.O. 1970, c. 244, s. 2.

Lieutenant  
Governor a  
corporation  
sole

3. The Lieutenant Governor for the time being is a corporation sole, and all bonds, recognizances and other instruments by law required to be taken to him in his public capacity shall be taken to him by his name of office, and may be sued for and recovered by him by his name of office, and the same shall not in any case go to or vest in the personal representatives of the Lieutenant Governor during whose government the same were so taken. R.S.O. 1970, c. 244, s. 3.

Power to  
appoint  
deputies for  
certain  
purposes

4. The Lieutenant Governor may, with the advice and consent of the Executive Council, from time to time appoint any person or persons, jointly or severally, to be his deputy or deputies for Ontario or any part or parts thereof, for the purpose of executing marriage licences, money warrants and commissions under any Act of the Legislature. R.S.O. 1970, c. 244, s. 4.

## Executive Council Act

R.S.O. 1980, c. 147

with amendments to date, including 1984, c. 35

et ses modifications à jour, y inclus 1984, c. 35

1. The Executive Council shall be composed of such persons <sup>Executive Council, how composed</sup> as the Lieutenant Governor from time to time appoints, and all executive councillors so appointed are ministers of the Crown, and rank among themselves in the order of their appointments. R.S.O. 1970, c. 153, s. 1.

2.(1) The Lieutenant Governor may appoint under the Great <sup>Portfolios</sup> Seal from among the ministers of the Crown the following ministers to hold office during pleasure:

Premier and President of the Council  
 Deputy Premier  
 Attorney General  
 Chairman of the Management Board of Cabinet  
 Minister of Agriculture and Food  
 Minister of Citizenship and Culture  
 Minister of Colleges and Universities  
 Minister of Community and Social Services  
 Minister of Consumer and Commercial Relations  
 Minister of Correctional Services  
 Minister of Education  
 Minister of Energy  
 Minister of the Environment  
 Minister of Government Services  
 Minister of Health  
 Minister of Industry and Trade  
 Minister of Intergovernmental Affairs  
 Minister of Labour  
 Minister of Municipal Affairs and Housing  
 Minister of Natural Resources  
 Minister of Northern Affairs  
 Minister of Revenue  
 Minister of Tourism and Recreation  
 Minister of Transportation and Communications  
 Provincial Secretary for Justice  
 Provincial Secretary for Resources Development  
 Provincial Secretary for Social Development  
 Solicitor General  
 Treasurer of Ontario and Minister of Economics,

and such other ministers as the Lieutenant Governor sees fit, and may by order in council prescribe their duties and the duties of any ministries over which they preside, and of the officers and clerks under their jurisdiction.

## EXECUTIVE COUNCIL

Parliamentary  
Assistants

(2) The Lieutenant Governor in Council may appoint such Parliamentary Assistants to assist such ministers of the Crown as he considers advisable and may prescribe their duties. 1972, c. 1, s. 3.(1), *revised*; 1981, c. 28, s. 1. 1983, c. 49, a. 2.

.....

Cost of  
accommoda-  
tion in  
Toronto

4.—(1) Every minister of the Crown whose principal residence is outside The Municipality of Metropolitan Toronto shall be paid the actual cost of his accommodation within The Municipality of Metropolitan Toronto not exceeding in any year an amount that is \$1,000 more than the amount determined in respect of the year by the Board of Internal Economy under subsection 66 (7) of the *Legislative Assembly Act*. 1980, c. 78, s. 1.

R.S.O. 1980,  
c. 235Expenses  
of Parlia-  
mentary  
Assistants

(2) Every Parliamentary Assistant shall be paid the expenses actually and reasonably incurred by him in carrying out his duties as a Parliamentary Assistant. 1973, c. 150, s. 2, *part*.

Transfer of  
duties from  
one member  
of Council  
to another

5.—(1) Notwithstanding the *Legislative Assembly Act*, any of the powers and duties that have been heretofore or may be hereafter assigned by law to any minister of the Crown may from time to time by order in council be assigned and transferred either for a limited period or otherwise to any other minister by name or otherwise.

Minister  
acting upon  
request

(2) On request made to him by the minister to whom any duties and powers have been assigned as provided in subsection (1), any other minister may for a period not exceeding one week perform such duties and exercise such powers in place of the minister making the request, and in such case no order in council is necessary.

Minister  
without  
portfolio  
may act

(3) Where any such duties and powers are assigned to a minister without portfolio, he does not thereby become ineligible as a member of the Assembly or to sit or vote therein. R.S.O. 1970, c. 153, s. 4.

Execution  
of contracts  
with Crown

6. No deed or contract in respect of any matter under the control or direction of a minister is binding on Her Majesty or shall be deemed to be the act of such minister unless it is signed by him or is approved by the Lieutenant Governor in Council. R.S.O. 1970, c. 153, s. 5.



## Policy and Priorities Board of Cabinet Act

R.S.O. 1980, c. 382

**1.** In this Act, "Board" means the Policy and Priorities Board of Cabinet. 1971 (2nd Sess.), c. 13, s. 1. Interpre-  
tation

**2.—**(1) There shall be a Policy and Priorities Board of Cabinet which shall consist of the Chairman and not fewer than five and not more than six other members of the Executive Council designated from time to time by the Lieutenant Governor in Council. Establis-  
ment and  
composition  
of Board

(2) The Premier is the Chairman of the Board. Chairman

(3) The Chairman shall preside at meetings of the Board and is responsible for the operation and administration of the Board. Chairman's  
powers and  
duties

(4) When the Chairman will be or is absent from any meeting he may appoint a member of the Board to preside at the meeting otherwise the members present at the meeting shall appoint a member to preside at the meeting. Absence of  
Chairman

(5) The Secretary to the Cabinet shall, from among the persons on the staff of the Cabinet office, provide the Board with such staff as is necessary for the proper conduct of the business of the Board. Staff

(6) The Board may determine its rules and methods of procedure and shall keep a minute book in which proceedings shall be recorded. Procedure

(7) Three members of the Board constitute a quorum. 1971 (2nd Sess.), c. 13, s. 2. Quorum

**3.** The Board shall be the committee of the Executive Council which shall develop, review, co-ordinate and advise on policy and priorities relating to, Duties of  
Board



POLICY AND PRIORITIES BOARD

- (a) the overall long-term and short-term goals of governmental activity in relation to the social and economic needs of the Province of Ontario;
- (b) the general outline of budgetary and fiscal policy and of levels of taxation and priorities among expenditure programs in accordance with the goals;
- (c) recommendations submitted by policy field committees;
- (d) program proposals and other matters referred to the Board;
- (e) the periodic reappraisal of existing programs; and
- (f) intergovernmental relations. 1971 (2nd Sess.), c. 13, s. 3.

## Management Board of Cabinet Act

R.S.O. 1980, c. 254

1.—(1) In this Act,

Interpre-  
tation

- (a) "Board" means the Management Board of Cabinet;
- (b) "Chairman" means the member of the Executive Council appointed as Chairman of the Board by the Lieutenant Governor;
- (c) "ministry" means a ministry of the Government of Ontario and includes a board, commission, authority, corporation or other agency of the Government of Ontario;
- (d) "public service" means all ministries or any part thereof;
- (e) "secretariat" means the staff of the Board reporting to the Board through the Secretary;
- (f) "Secretary" means the Secretary of the Board;
- (g) "Vice-Chairman" means the member of the Executive Council who by order in council is appointed the Vice-Chairman of the Board.

(2) Except as otherwise provided in this Act, section 1 of the *Financial Administration Act* applies to this Act. 1971 (2nd Sess.), c. 12, s. 1; 1972, c. 1, s. 2.

Idem  
R.S.O. 1980,  
c. 161

2.—(1) The Management Board of Cabinet is continued and shall consist of the Chairman, the Vice-Chairman and not fewer than four and not more than six other members of the Executive Council designated from time to time by the Lieutenant Governor in Council.

Composition  
of Board

(2) The Lieutenant Governor in Council may designate other ministers to serve as alternates in the absence of members of the Board.

Alternate  
members

(3) The Chairman shall preside at meetings of the Board and is responsible for the operation and administration of the Board and the secretariat.

Chairman's  
powers and  
duties

## MANAGEMENT BOARD OF CABINET

Absence of  
Chairman

(4) When the Chairman is absent from any meeting, the Vice-Chairman shall preside at the meeting and, when both the Chairman and Vice-Chairman are absent, the members present at a meeting shall appoint a member to preside at the meeting.

## Secretary

(5) The Lieutenant Governor in Council shall appoint an officer, to be known as the Secretary of the Management Board of Cabinet, who shall perform such functions as the Board may assign to him, and the Secretary of the Management Board of Cabinet shall rank as and have all the powers and duties of a deputy minister of a ministry.

Officers and  
employees

(6) Such other officers and employees as are necessary for the proper conduct of the business of the Board shall be appointed under the *Public Service Act*.

R.S.O. 1980,  
c. 418

## Procedure

(7) The Board may determine its rules and methods of procedure and shall keep a minute book in which shall be recorded the proceedings of the Board.

## Quorum

(8) Three members of the Board constitute a quorum. 1971 (2nd Sess.), c. 12, s. 2; 1972, c. 1, s. 2.

Duties of  
Board

**3.—**(1) The Board shall be a committee of the Executive Council with the following powers and duties:

- (a) to co-ordinate the implementation of programs sanctioned or provided for by the Legislature;
- (b) to direct the preparation and review of forecasts, estimates and analyses of revenues, expenditures, commitments and other data pertaining to authorized or proposed programs and to assess the results thereof;
- (c) to control expenditures of public money within the amounts appropriated or otherwise provided for by the Legislature;
- (d) to approve organization and staff establishments in the public service;
- (e) to establish, prescribe or regulate such administrative policies and procedures as the Board considers necessary for the efficient and effective operation of the public service generally;
- (f) to initiate and supervise the development of management practices and systems for the efficient operation of the public service; and



## MANAGEMENT BOARD OF CABINET

(g) to report to the Executive Council on any other matter concerning general administrative policy in the public service that is referred to it by the Executive Council or on which the Board considers it desirable to report to the Executive Council.

(2) The Board may require from any public officer or any agent of the Crown any account, return, statement, document, report or information that the Board considers necessary for the performance of its duties. Board may require production of documents

(3) The Board may issue such administrative directives as it considers necessary in the performance of its duties. Administrative directives

(4) The Board may undertake or order such studies and examinations of the operation and administration of any part of the public service as the Board considers necessary for the performance of the duties of the Board. Studies

(5) The Board in the exercise of its powers and duties under this or any other Act is subject to the direction of the Executive Council which may amend or revoke any action of the Board. 1971 (2nd Sess.), c. 12, s. 3. Board subject to direction of Executive Council

4.—(1) Where an accident happens to any public work or building when the Legislature is not in session and an expenditure for the repair or renewal thereof is urgently required, or where any other matter arises when the Legislature is not in session in respect of which an expenditure not foreseen or provided for by the Legislature is urgently required for the public good, the Board shall estimate the amount to be required for such expenditure and the Lieutenant Governor in Council upon the report of the Treasurer of Ontario that there is no appropriation for the expenditure and upon the report of the Board stating its estimate and upon the recommendation of the minister of the ministry concerned that the expenditure is urgently required, may order a special warrant to be prepared to be signed by the Lieutenant Governor authorizing the payment of the amount estimated to be required for such expenditure. Special warrants

(2) A warrant issued under this section shall be deemed to be an appropriation for the fiscal year in which it is issued. Warrant an appropriation  
1971 (2nd Sess.), c. 12, s. 4; 1972, c. 1, s. 2.

5. Where an appropriation is exhausted or a sufficient amount was not provided and the public interest or the urgent requirements of the public service necessitate further payments, the Board, upon the report of the minister of the ministry concerned as to the necessity for further Board orders



## MANAGEMENT BOARD OF CABINET

payments and stating the reason why the appropriation is insufficient and the amount estimated to be required, may make an order authorizing payments to be made against such amount as it considers proper. 1971 (2nd Sess.), c. 12, s. 5; 1972, c. 1, s. 2.

## Regulations

6. Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations,

- (a) respecting the collection, management and administration of, and accounting for, public money;
- (b) respecting the retention and disposal of records;
- (c) fixing the scale of allowances for travelling and living expenses to be allowed to any person employed in or in connection with any part of the public service, except those allowances which have been determined by bargaining under the *Crown Employees Collective Bargaining Act*;
- (d) for any purpose necessary for the efficient administration of the public service. 1971 (2nd Sess.), c. 12, s. 6 (1); 1972, c. 97, s. 1.

R.S.O. 1980,  
c. 108

Chairman to  
be minister  
of ministry  
R.S.O. 1980,  
c. 147

7. For the purposes of the *Executive Council Act*, the Chairman of the Board is a minister having charge of a ministry. 1971 (2nd Sess.), c. 12, s. 7; 1972, c. 1, s. 2.

LEGISLATIVE POWER



POUVOIR LÉGISLATIF



## LEGISLATIVE POWER

### Introduction

Ontario statutory provisions concerning the legislative power deal with the composition and function of the Legislature, describe the present electoral system and treat the examination, publication and interpretation of statutes and regulations. This chapter is therefore divided as follows:

- a. Legislative bodies
  - b. Representation
  - c. Statutes and regulations.
- 

## POUVOIR LÉGISLATIF

### Introduction

La législation ontarienne relative à l'autorité législative porte sur les composantes et le fonctionnement du pouvoir législatif, décrit le système électoral en vigueur et traite de l'examen, de la publication et de l'interprétation des textes législatifs et réglementaires. Ce chapitre est donc divisé comme suit:

- a. Les composantes du pouvoir législatif
- b. La représentation
- c. Les lois et règlements.





## LEGISLATIVE BODIES

### Introduction

In pursuance of section 69 of the Constitution Act, 1867 (formerly B.N.A. Act, 1867), the legislative power in Ontario is vested in the Lieutenant Governor and one elected chamber, the Legislative Assembly. In the exercise of its function, the Legislative Assembly of Ontario has to follow the division of legislative powers between the federal and provincial governments as set up in sections 91 to 95 of the Constitution Act, 1867. In their relations with the executive and the judicial powers, the holders of the legislative power also have to take into consideration the constitutional principles relating to the parliamentary system and the form of responsible government which prevails in Canada. These principles are stated briefly in the introduction to the federal legislative power, in volume 2 of this collection, pp. F5, and subs.

The Lieutenant Governor, the chief executive officer of the province, also exercises some legislative functions. He invites the leader of the political party which obtained a majority of the popular votes in an election to form a new government. He summons, adjourns or dissolves the Legislative Assembly, and formally opens and closes each session of the Assembly. The major legislative function of the Lieutenant Governor is to give royal assent to all bills passed by the Legislative Assembly, giving them final effect. But he can also withhold the assent or reserve the bill for the approbation by the Governor General of Canada, but this power is, however, rarely used. The Legislative Assembly, on the other hand, enacts legislation within its jurisdiction, exercises supervision and control over government and administrative actions, and serves as a forum for discussion on matters of provincial, regional or local interest. It is for the province what the House of Commons is for the federal government. It is governed by the Legislative Assembly Act, reproduced below, and by implementing regulations. The Legislative Assembly consists of 125 members, each representing 125 electoral

districts, as provided by the Representation Act, R.S.O. 1980, c. 450, not reproduced here.

Selected references:

- MacDonald, Donald C., "Modernizing the Legislature," in MacDonald, Donald C., ed., Government and Politics of Ontario, Toronto, Macmillan, 1975, pp. 93-112.
- Schindeler, F.F., Responsible Government in Ontario, Toronto, University of Toronto Press, 1969, 295 p. (Canadian Government Series, No. 16). See especially Chapter 4: The Legislative Branch (pp. 81-128); Chapter 5: Parliamentary Procedure: The Rules, the General Debates, and the Formal Legislative Process (pp. 129-175); and Chapter 6: Parliamentary Procedure: Private Members' Business, Questions and Special Procedures (pp. 176-212).

## LES COMPOSANTES DU POUVOIR LÉGISLATIF

### Introduction

En vertu de l'article 69 de la Loi constitutionnelle de 1867 (autrefois l'A.A.N.B., 1867), le pouvoir législatif ontarien est dévolu au lieutenant-gouverneur et à une chambre élue désignée sous le nom d'Assemblée législative. Dans l'exercice de ses fonctions, le législateur ontarien doit respecter le partage des compétences législatives entre l'état fédéral et les provinces tel qu'établi surtout aux articles 91 à 95 de la Loi constitutionnelle de 1867. Dans leurs relations avec les pouvoirs exécutif et judiciaire, les détenteurs de l'autorité législative doivent également tenir compte des principes constitutionnels rattachés au régime parlementaire et au système de gouvernement responsable en vigueur au Canada. Ces principes sont brièvement énoncés dans l'introduction générale sur le pouvoir législatif fédéral aux pages F8 et suivantes du volume 2 de cette collection.

Chef de l'exécutif provincial, le lieutenant-gouverneur exerce aussi certaines fonctions reliées au pouvoir législatif. C'est lui qui, à la suite d'une élection, invite le chef du parti politique qui a fait élire le plus grand nombre de députés à former le nouveau gouvernement. C'est lui qui convoque, proroge et dissout chaque législature et préside l'ouverture de chaque session. Sa principale fonction parlementaire consiste à sanctionner les lois adoptées par l'Assemblée législative et à leur donner par le fait même une existence juridique. Mais il peut aussi désavouer ces lois ou les réserver à l'approbation du gouverneur général du Canada; ce pouvoir de désaveu ou de réserve est, cependant, rarement exercé. De son côté, l'Assemblée législative remplit la fonction de législateur, exerce une surveillance et un contrôle sur les activités du gouvernement et de l'administration et sert de forum de délibérations où sont débattues les questions d'intérêt provincial, régional et local. Elle est en quelque sorte à la province ce que la Chambre des communes est à l'état fédéral. Elle est régie par le Legislative Assembly Act reproduit ci-après, ainsi que par les règlements qu'elle s'est elle-même donnés. Sa composition est déterminée par le Representation Act, R.S.O. 1980, c. 450, non reproduit ici; 125 députés, représentant chacun l'un ou l'autre des 125 districts électoraux de la province, siègent présentement à l'Assemblée législative.

### Sources choisies

MacDonald, Donald C., "Modernizing the Legislature" dans Donald C. MacDonald (ed.), Government and Politics of Ontario, Toronto, Macmillan, 1975, pp. 93-112.



Schindeler, F.F., Responsible Government in Ontario, Toronto, University of Toronto Press, 1969, 295 p. (Canadian Government Series, 16). Consulter le chapitre 4, pp. 81-128: The Legislative Branch; le chapitre 5, pp. 129-175: Parliamentary Procedure: the Rules, the General Debates, and the Formal Legislative Process; le chapitre 6, pp. 176-212: Parliamentary Procedure: Private Members' Business, Questions and Special Procedures.

## LEGISLATIVE ASSEMBLY ACT

R.S.O. 1980, c. 235

with amendments to date, including 1984, c. 36

Note:

Not reproduced here are sections 60 to 71, dealing with various indemnities and allowances paid to members of the Legislative Assembly. However, the following sources should be consulted:

1. Legislative Assembly Retirement Allowances Act, R.S.O. 1980, c. 236
2. Legislative Assembly of Ontario, Standing Orders, Approved by the Legislative Assembly, Wednesday, April 22nd, 1970. Toronto, 1970.

## LEGISLATIVE ASSEMBLY ACT

R.S.O. 1980, c. 235

et ses modifications à jour, y inclus 1984, c. 36

Note:

Ne sont pas reproduits les art. 60 à 71 qui traitent des diverses indemnités et allocations versées aux membres de l'Assemblée législative.

Par ailleurs, il y aurait lieu de consulter aussi les sources suivantes:

1. Legislative Assembly Retirement Allowances Act, R.S.O. 1980, c. 236
2. Legislative Assembly of Ontario, Standing Orders Approved by the Legislative Assembly, Wednesday, April 22nd, 1970. Toronto, 1970.



## Legislative Assembly Act

1. The Assembly shall be composed of as many members as is fixed from time to time by the *Representation Act*. R.S.O. 1970, c. 240, s. 1.

Assembly,  
how  
composed  
R.S.O. 1980,  
c. 450

2.—(1) The Legislature shall not determine or be dissolved by the demise of the Crown, but shall continue, and may meet, convene and sit, proceed and act, in the same manner as if such demise had not happened.

Demise of  
the Crown

(2) Nothing in this section alters or abridges the power of the Crown to prorogue or dissolve the Legislature. R.S.O. 1970, c. 240, s. 2.

Power to  
prorogue or  
dissolve not  
affected

3. Every Legislature shall continue for five years from the fifty-fifth day after the date of the writs for the election and no longer, subject to being sooner dissolved by the Lieutenant Governor. R.S.O. 1970, c. 240, s. 3.

Duration of  
Legislature

4. There shall be a session of the Legislature once at least in every year, so that twelve months do not intervene between the last sitting of the Legislature in one session and its first sitting in the next. R.S.O. 1970, c. 240, s. 4.

Yearly  
session

5. It is not necessary for the Lieutenant Governor in proroguing the Legislature to name a day to which it is prorogued, nor to issue a formal proclamation for a meeting of the Legislature when it is not intended that the Legislature shall meet for despatch of business. R.S.O. 1970, c. 240, s. 5.

Prorogation

6.—(1) Subject to subsection (2), the persons qualified to sit and vote as members of the Assembly are any male or female persons of the full age of eighteen years who are British subjects by birth or by naturalization under the laws of Canada from time to time in force, resident in Ontario and not disqualified by this or any other Act from election to the Assembly. R.S.O. 1970, c. 240, s. 6 (1); 1971, c. 98, s. 4.

Qualification  
of members

(2) For the purposes of this Act, a female person shall be deemed to be a British subject,

Where  
women  
deemed  
British  
subjects



## LEGISLATIVE ASSEMBLY

- (a) if she was born a British subject and is unmarried, or is married to a British subject and has not become a subject of a foreign power; or
- (b) if she has herself been personally naturalized as a British subject and has not since become a subject of a foreign power; or
- (c) if she has become a British subject by marriage or by the naturalization as a British subject of her parent while she was a minor, and in either case has done nothing to forfeit or lose her status as a British subject, and has obtained a certificate under the signature of a judge of the Supreme Court or of a county or district court, and the seal of the court, certifying that she is of the full age of eighteen years, has resided in Canada a sufficient length of time and is possessed of all requirements necessary to entitle her, if unmarried, to become naturalized as a British subject, and that she has taken the oath of allegiance to Her Majesty. R.S.O. 1970, c. 240, s. 6 (2).

Senators  
and members  
of House of  
Commons  
disqualified

7.—(1) No person who on the day of nomination for election to the Assembly is a member of the Senate of Canada or of the House of Commons of Canada is eligible as a member of the Assembly or shall be returned as elected thereto, and if any such person receives a majority of votes at an election, the votes cast for him shall be thrown away and the returning officer shall return the person having the next greatest number of votes if he is otherwise eligible.

Vacation  
of seat

(2) If a member of the Assembly is elected and returned to the House of Commons of Canada or is appointed to the Senate of Canada, his seat in the Assembly is thereupon vacated and a writ shall issue forthwith for a new election to fill the vacancy. R.S.O. 1970, c. 240, s. 7.

Disqualifica-  
tion of  
persons  
holding  
office under  
Crown

8.—(1) Except as hereinafter specially provided, no person accepting or holding any office, commission or employment in the service of the Government of Canada, or of the Government of Ontario at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada or of the Government of Ontario to which any salary, fee, wage, allowance, emolument or profit of any kind is attached is eligible as a member of the Assembly or shall sit or vote therein. R.S.O. 1970, c. 240, s. 8 (1).

## LEGISLATIVE ASSEMBLY

(2) Nothing in this section renders ineligible as aforesaid <sup>Exceptions</sup> or disqualifies from sitting and voting in the Assembly when not otherwise disqualified,

(a) a member of the Executive Council or a Parliamentary Assistant;

(b) an officer or other member of the regular force or reserve force of the Canadian Forces;

(c) a justice of the peace, coroner, notary public or public school supervisory officer;

(d) any person holding any temporary employment in the service of the Government of Canada requiring special qualifications or professional skill, or a commissioner appointed under the *Inquiries Act* <sup>R.S.C. 1970, c. 1-13</sup> (Canada);

(e) a member of any commission, board, committee or other body holding office at the nomination of the Lieutenant Governor in Council, but this clause does not apply to members of the Ontario Labour Relations Board, The Liquor Licence Board of Ontario, the Ontario Municipal Board, the Workmen's Compensation Board, the Ontario Securities Commission, The Milk Commission of Ontario, the Civil Service Commission, or the Board of Parole. <sup>R.S.O. 1970, c. 240, s. 8 (2); 1972, c. 1, s. 4 (1).</sup>

D.—(1) Subject to subsection (2), a member of the Assembly is not eligible to hold office as a member of the council of a municipality, including a district, metropolitan or regional municipality, or as a member of a local board, as defined in the *Municipal Affairs Act*, of such a municipality. <sup>Member of Assembly not eligible to hold municipal office  
R.S.O. 1980, c. 303</sup>

(2) Every person who is elected a member of the Assembly while holding an office referred to in subsection (1) may continue to hold such office, notwithstanding any other Act, until the end of the day on which the return of the election of such person to the Assembly is published in *The Ontario Gazette* under section 130 of the *Election Act*, at which time he shall be deemed to have resigned such office. <sup>Member deemed to have resigned municipal office when election to Assembly published  
R.S.O. 1980, c. 133</sup> 1972, c. 131, s. 1, *part.*

## LEGISLATIVE ASSEMBLY

Disqualifi-  
cation of  
public  
contractors

10. Except as authorized by resolution of the Assembly, no person holding or enjoying, undertaking or executing, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, any contract or agreement with Her Majesty, or with any public officer or ministry, with respect to the public service of Ontario, or under which any public money of Ontario is to be paid for any service, work, matter or thing, is eligible as a member of the Assembly or shall sit or vote therein. R.S.O. 1970, c. 240, s. 9; 1972, c. 1, s. 2.

Exceptions:

11.—(1) No person is ineligible as a member of the Assembly,

trustees for  
estates of  
contractors

(a) by reason of his being interested as an executor, administrator or trustee only, having otherwise no beneficial interest in any such contract or agreement;

share-  
holders in  
contracting  
companies

(b) by reason of his being a shareholder or stockholder in an incorporated company having any such contract or agreement, unless such contract or agreement is for the building of a public work of Ontario, and such building or work has not been let by tender to the lowest bidder;

lenders of  
money to  
Government

(c) by reason of his being a contractor for the loan of money or for securities for the payment of money to the Government of Ontario under the authority of the Legislature after public competition or respecting the purchase or payment of the public stock or debentures of Ontario on terms common to all persons;

holders of  
mining  
licences, etc.

(d) by reason of his being the holder of a mining licence or having a contract or agreement with Her Majesty or with any public officer or ministry with respect to the same or to mines or mining rights, but no such person shall vote on any question affecting such licence, contract or agreement or in which he is interested by reason thereof;

owners and  
persons  
interested  
in certain  
newspapers

(e) by reason of his being proprietor of or otherwise interested in a newspaper or other periodical publication in which official advertisements are inserted which appear in other newspapers or publications in Ontario, or which is subscribed for by the Government of Ontario, or any ministry thereof, or by any



## LEGISLATIVE ASSEMBLY

of the public institutions of Ontario, unless such advertisements or subscriptions are paid for out of the public moneys of Ontario at rates greater than usual rates;

- (f) by reason of his holding a licence, permit or permission for cutting timber, or being interested in any such licence, permit or permission, directly or indirectly, alone or with another, by himself or by the interposition of a trustee or third person, or by reason of there being money due or payable to Her Majesty in respect of timber cut, but no such person shall vote on any question affecting such licence, permit or permission or in which he is interested by reason thereof; timber  
licensees
- (g) by reason of his being the holder of a fishery licence, or having a contract or agreement with Her Majesty or with any public officer or ministry with respect to the same or to fisheries or fishing rights, but no such person shall vote on any question affecting such licence, contract or agreement or in which he is interested by reason thereof; fishery  
licensees
- (h) by reason of his being a surety or contractor or liable for the payment of money for or on account of the maintenance or tuition of an inmate or pupil of any Government institution; certain  
sureties or  
obligors
- (i) by reason of his being a postmaster elsewhere than in a city, town or incorporated village, or interested in a contract for carrying the mail between two or more post offices neither of which is in a city, town or incorporated village or of his being the surety of any such postmaster or contractor; certain post-  
masters and  
mail carriers
- (j) by reason of his receiving or having received or agreed to receive compensation with respect to any property taken or purchased by the Crown or by any ministry or commission of the Government of Ontario or with respect to any interest in such property where the amount of such compensation has been fixed by an award made under the *Ministry of Government Services Act* or any other general or special Act of the Legislature, or has been agreed upon and the judge of the county or district in which the property is situate has certified in writing that the amount of compensation is fair and reasonable, but no such person shall vote on any question arising in the Assembly touching such matter; receipt of  
compensa-  
tion for land  
not to  
disqualify

R.S.O. 1980,  
c. 279



## LEGISLATIVE ASSEMBLY

sureties  
of public  
officers

- (k) by reason of his being a surety for a public officer or Ontario land surveyor or other person required by law to furnish security to the Crown;

burial of  
indigents

- (l) by reason of having received payment from the Crown for the burial of indigents who were resident in territory without municipal organization;

pensions

R.S.O. 1980,  
cc. 236, 418,  
419, 494

- (m) by reason of his being entitled to or in receipt of any money under the *Legislative Assembly Retirement Allowances Act*, the *Public Service Act*, the *Public Service Superannuation Act* or the *Teachers' Superannuation Act* or under any other Act of the Legislature or the Parliament of Canada that provides a pension, annuity, allowance or other similar payment that is made up in whole or in part of public money;

benefits  
common  
to others

- (n) by reason of his being entitled to receive on terms common to all persons similarly entitled and of his receiving or agreeing to receive in accordance with such entitlement any service or commodity or any refund, rebate, subsidy, loan or any other such benefit or payment that is authorized under any Act. R.S.O. 1970, c. 240, s. 10 (1); 1972, c. 1, s. 2.

Duty of  
sureties who  
have been  
elected

- (2) A person elected a member of the Assembly who is at the time of his election a surety as aforesaid shall, before he sits or votes therein, take and complete such action as may be requisite to relieve him from any thereafter accruing liability in respect of his suretyship, and no person who is liable as such surety in respect of any accruing matter shall sit or vote in the Assembly. R.S.O. 1970, c. 240, s. 10 (2).

When  
disqualifica-  
tion to  
become  
operative

12. No disqualification under section 8 or 10 on any ground arising before the election shall be held by any court to affect the seat of a member of the Assembly or to disentitle any person to sit or vote therein until the disqualification has been duly found and declared by an election court, but this is not to be construed as affecting the cases provided for by subsection 11 (2), nor as affecting the right of the Assembly to expel a member according to the practice of Parliament or otherwise. R.S.O. 1970, c. 240, s. 11.

Effect of  
election of  
disqualified  
person

13. If a person who is disqualified or ineligible or incapable of being elected a member of the Assembly is nevertheless elected and returned, his election and return is void. R.S.O. 1970, c. 240, s. 12.

## LEGISLATIVE ASSEMBLY

14. Notwithstanding anything in any Act, where a member of the Assembly is appointed a member of the Executive Council or a Parliamentary Assistant, he shall not, by reason of the acceptance of such appointment, vacate his seat or be disqualified from sitting or voting in the Assembly. R.S.O. 1970, c. 240, s. 13; 1972, c. 1, s. 4 (2).

Member not disqualified on appointment to Executive Council, etc.

15.—(1) If a member of the Assembly by accepting any office or becoming a party to a contract or agreement as in sections 8 and 10 mentioned is disqualified by law to continue to sit or vote in the Assembly, his seat shall be vacated, but he may be re-elected if he is not declared ineligible under this Act.

Disqualification through acceptance of office

(2) Nevertheless, whenever a person holding any of the offices mentioned in section 2 of the *Executive Council Act* and being at the same time a member of the Assembly resigns his office and accepts any other of such offices, he does not thereby vacate his seat in the Assembly.

Saving in case of exchange of offices in Executive Council  
R.S.O. 1980, c. 147

(3) Where a member of the Executive Council holding any one of the offices mentioned in section 2 of the *Executive Council Act* is appointed to hold another office in addition to or in connection with such first-mentioned office, he does not thereby vacate his seat, and any increase or change of emolument arising from the holding of such two offices does not cause a vacancy or render a re-election necessary. R.S.O. 1970, c. 240, s. 14.

additional offices in Executive Council

16.—(1) Subject to section 12, a person ineligible as a member of or disqualified from sitting or voting in the Assembly who sits or votes therein while he is so ineligible or disqualified shall forfeit the sum of \$2,000 for every day on which he so sits or votes, and such sum may be recovered from him by any person who sues for it in any court of competent jurisdiction.

Penalty upon disqualified person sitting or voting

(2) If an action is brought and judgment is recovered against the defendant, no other action shall be brought or proceeding taken against him for any act under this section committed before notice to him of the recovery of the judgment.

Idem

## LEGISLATIVE ASSEMBLY

Staying  
proceedings  
in other  
actions

(3) The court wherein any other action is brought contrary to the intent and meaning of this Act, may upon the defendant's motion, stay the proceedings therein, if the first-mentioned action be prosecuted without fraud and with effect, but no action shall be deemed an action within this section unless so prosecuted. R.S.O. 1970, c. 240, s. 15.

Disclaimer  
by member  
elect

17.—(1) A member elect may at any time before his election is complained of disclaim his seat in the manner hereinafter provided, and he thereby vacates the seat and ceases to be a member in respect of the seat so disclaimed.

Mode of  
disclaiming

(2) A member elect who desires to disclaim may transmit by registered mail addressed to the Clerk of the Legislative Assembly, Toronto, or cause to be delivered to him, a disclaimer signed by the member in the presence of two subscribing witnesses to the following effect:

I,....., member elect to the Legislative Assembly  
for the electoral district of.....  
hereby disclaim all my right or title to sit or vote or in any manner  
to act as such member.

Transmis-  
sion of copy  
of disclaimer

(3) The Clerk of the Assembly shall, on receiving a disclaimer, forthwith send a copy thereof,

(a) in the case of an election that has taken place in The Regional Municipality of York or The Municipality of Metropolitan Toronto, to the Registrar of the Supreme Court at Toronto;

(b) in the case of an election that has taken place elsewhere, to the local registrar for the county or provisional judicial district in which the electoral district for which the member so disclaiming or any part thereof is situate, was elected R.S.O. 1970, c. 240, s. 17 (1-3).

Resignation  
before  
meeting of  
Legislature

18. If a person returned as elected at a general election wishes to resign his seat before the first session of the Legislature thereafter, he may address and cause to be delivered to any two members elect of the Assembly a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, and the two members upon receiving the declaration shall forthwith address their warrant under their hands and seals to the Chief Election Officer for the issue of a writ for the election of a member for the electoral district in the place of the member so resigning, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 18.



## LEGISLATIVE ASSEMBLY

19.—(1) A member may also resign his seat,

In other  
cases

(a) by giving in his place in the Assembly notice of his intention to resign it, which notice shall be entered immediately by the Clerk of the Assembly upon the Journals of the Assembly; or

(b) by addressing and causing to be delivered to the Speaker a declaration that he resigns his seat, made in writing under his hand before two subscribing witnesses, which declaration may be so made and delivered either during a session of the Legislature or in the interval between two sessions.

(2) An entry of the declaration so delivered to the Speaker shall thereafter be made upon the Journals of the Assembly. Record

(3) Immediately after the notice of intention to resign has been entered upon the Journals, or after the receipt of the declaration, as the case may be, the Speaker shall address his warrant under his hand and seal to the Chief Election Officer for the issue of a writ for the election of a member in the place of the member so resigning, and in either case the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 19. New writ

20. If a member wishes to resign his seat in the interval between two sessions of the Legislature, and there is then no Speaker, or the Speaker is absent from Ontario, or if the member is himself the Speaker, he may address and cause to be delivered to two members the declaration before mentioned, and the two members upon receiving the declaration shall forthwith address their warrant under their hands and seals to the Chief Election Officer for the issue of a writ for the election of a member in the place of the member so resigning, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 20. Where there is no Speaker, or the member is himself the Speaker

21.—(1) A member or member elect tendering his resignation in any manner hereinbefore provided for shall be deemed to have vacated his seat and to have ceased to be a member of the Assembly in respect thereof. Consequences of resignation

(2) A member or member elect shall not tender his resignation while his election is controverted, nor until after the expiration of the time within which an election petition may be filed. R.S.O. 1970, c. 240, s. 21. Time for resignation



## LEGISLATIVE ASSEMBLY

Issue of writ  
for new  
election,  
when election  
adjudged  
void  
R.S.O. 1980,  
c. 133

**22.** Forthwith after receipt by the Clerk of the Assembly of a judgement by the Supreme Court under Part VIII of the *Election Act* that the election of a person is void and ordering a new election, the Speaker or, if there is no Speaker or the Speaker is absent from Ontario or is unable to act, the Clerk of the Assembly shall address his warrant under his hand and seal to the Chief Election Officer for the issue of a writ for the election of a member for the electoral district the election for which was adjudged to be void, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 22, *revised*.

Report to  
Assembly

**23.** The proceedings taken under sections 18 to 22 by the Speaker or Clerk of the Assembly shall be reported to the Assembly at the earliest practicable time, and shall be forthwith entered upon the Journals. R.S.O. 1970, c. 240, s. 23.

Disqualifi-  
cation of  
persons  
declared  
not elected

**24.—(1)** If a person returned as elected appears by the judgment mentioned in section 22 not to have been duly returned or elected, he shall not thereafter unless re-elected sit or vote in the Assembly.

Rights of  
persons  
declared  
elected

(2) If a person, other than the person returned as elected, appears by the judgment to have been duly returned or elected, he is thereupon entitled to sit and vote in the Assembly. R.S.O. 1970, c. 240, s. 24.

Proceedings  
in case of  
vacancy by  
death or  
acceptance  
of office

**25.—(1)** If a vacancy occurs in the Assembly by the death of a member, or by his accepting an office, commission or employment, or by his becoming a party to a contract as mentioned in section 10, unless otherwise provided by this Act, the Speaker, on being informed of the vacancy by a member of the Assembly in his place, or by notice in writing under the hands and seals of two members, shall forthwith address his warrant to the Chief Election Officer for the issue of a writ for the election of a member to fill the vacancy, and the writ shall issue accordingly.

Proceedings  
when  
Speaker is  
absent from  
Ontario or  
there is no  
Speaker

(2) If any such vacancy occurs, or at any time thereafter, before the warrant for the writ has issued, there is no Speaker, or the Speaker is absent from Ontario, or if the member whose seat is vacated is himself the Speaker, then two members may address their warrant under their hands and seals to the Chief Election Officer for the issue of a writ for the election of a member to fill the vacancy, and the writ shall issue accordingly. R.S.O. 1970, c. 240, s. 26.

## LEGISLATIVE ASSEMBLY

26.—(1) A warrant may issue under the hands and seals of two members elect to the Chief Election Officer for the issue of a writ for the election of a member to fill a vacancy arising after a general election and before the first session of the Legislature thereafter, by reason of any of the causes mentioned in section 25, and the writ may issue at any time after such vacancy.

Filling a vacancy before Legislature meets after a general election

(2) The election to be held under the writ does not affect the right of any person entitled to contest the previous election, and the court shall determine whether the member who has died or whose seat has become vacant as aforesaid, or any other person, was duly returned or elected, which determination, if adverse to the return of such member and in favour of any other candidate, avoids the election held under this section, and the candidate declared duly elected at the previous election is entitled to take his seat as if no subsequent election had been held. R.S.O. 1970, c. 240, s. 27.

Election being contested not affected

27.—(1) Where a vacancy occurs in the membership of the Assembly, a writ shall be issued within six months after receipt by the Chief Election Officer of the warrant for the issue of a writ for the election of a member to fill such vacancy. 1971, c. 101, s. 1, *part*; 1974, c. 72, s. 2.

Where vacancy exists in Assembly

(2) This section does not apply where the vacancy occurs in the last year of the legal life of the Assembly.

Non-application of section

(3) If the Legislature is dissolved after the issue of a writ under subsection (1) and before an election is held under the writ, the writ is revoked on the dissolution of the Legislature. 1971, c. 101, s. 1, *part*.

Writ revoked on dissolution of Legislature

28.—(1) The Assembly at its first meeting after a general election shall proceed to elect one of its members to be Speaker and one of its members to be Deputy Speaker.

Election of Speaker and Deputy

(2) In case of a vacancy in the office of Speaker or Deputy Speaker, the Assembly shall proceed to elect another of its members to fill the vacancy. 1974, c. 116, s. 1, *part*.

Vacancy in office of Speaker or Deputy

29.—(1) The Speaker shall preside at all meetings of the Assembly and shall preside over and have charge of the Office of the Assembly.

Duties

(2) In the absence of the Speaker, the Deputy Speaker has all the powers, privileges and duties of the Speaker. 1974, c. 116, s. 1, *part*.

Absence of Speaker



## LEGISLATIVE ASSEMBLY

Illness,  
etc., of  
the Speaker  
or Deputy

30. When the Speaker or the Deputy Speaker finds it necessary to leave the chair during any part of the sittings on any day, he may call upon any member to take the chair and to act as Speaker during the remainder of the day unless the Speaker or the Deputy Speaker resumes the chair before the close of the sittings for that day. 1974, c. 116, s. 1, *part.*

Election  
of Speaker  
for the day

31. When the Speaker and the Deputy Speaker are not present at the meeting of the Assembly on any day, the Assembly may elect a member to take the chair and act as Speaker for that day. 1974, c. 116, s. 1, *part.*

Election  
of Speaker  
*pro*  
*tempore*

32. If the Speaker and the Deputy Speaker are absent from the chair for a period of forty-eight consecutive hours, the Assembly may elect another of its members to act as Speaker, and the member so elected, during the continuance of the absence of the Speaker and the Deputy Speaker, has all the powers, privileges and duties of the Speaker. 1974, c. 116, s. 1, *part.*

Speaker and  
Deputy to  
continue in  
office  
following  
dissolution

33. The persons who hold the office of Speaker and Deputy Speaker at the time of any dissolution of the Legislature shall be deemed to be the Speaker and Deputy Speaker, respectively, until a Speaker and Deputy Speaker are elected by the Assembly. 1974, c. 116, s. 1, *part.*

Validity of  
acts while  
acting  
Speaker  
presides

34. Every bill passed and every order made and thing done by the Assembly while a member is acting as Speaker is as valid and effectual as if done while the Speaker himself was in the chair. R.S.O. 1970, c. 240, s. 34.

Power to  
compel  
attendance  
of witnesses,  
etc.

35.—(1) The Assembly may at all times command and compel the attendance before the Assembly or a committee thereof of such persons, and the production of such papers and things, as the Assembly or committee considers necessary for any of its proceedings or deliberations.

Speaker's  
warrant for  
attendance,  
etc.

(2) When the Assembly requires the attendance of a person before the Assembly or a committee thereof, the Speaker may issue his warrant directed to the person named in the order of the Assembly requiring his attendance before the Assembly or committee and the production of the papers and things as ordered. R.S.O. 1970, c. 240, s. 35.

Protection  
of persons  
acting under  
authority

36. No person is liable in damages or otherwise for any act done under the authority of the Assembly and within its legal power or under or by virtue of a warrant issued under such authority, and every such warrant may command the aid and assistance of all sheriffs, bailiffs, constables and

## LEGISLATIVE ASSEMBLY

others, and every refusal or failure to give such aid or assistance when required is a contravention of this Act. R.S.O. 1970, c. 240, s. 36.

**37.** A member of the Assembly is not liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof. R.S.O. 1970, c. 240, s. 37. Privilege of speech, etc.

**38.** Except for a contravention of this Act, a member of the Assembly is not liable to arrest, detention or molestation for any cause or matter whatever of a civil nature during a session of the Legislature or during the twenty days preceding or the twenty days following a session. R.S.O. 1970, c. 240, s. 38. Freedom from arrest

**39.** During the periods mentioned in section 38, members, officers and employees of the Assembly and witnesses summoned to attend before the Assembly or a committee thereof are exempt from serving or attending as jurors in any court of justice in Ontario. R.S.O. 1970, c. 240, s. 39. Exemption of members and officers from serving as jurors

**40.** No member of the Assembly shall knowingly accept or receive, either directly or indirectly, any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted or intended to be submitted to the Assembly or a committee thereof. R.S.O. 1970, c. 240, s. 40. Members not to receive fees for drafting bills, etc.

**41.** No barrister or solicitor who in the practice of his profession is a partner of a member of the Assembly shall knowingly accept or receive, directly or indirectly, any fee, compensation or reward for or in respect of any matter or thing mentioned in section 40. R.S.O. 1970, c. 240, s. 41. Barristers, etc., being partners of members not to receive fees for drafting bills, etc.

**42.** Every person contravening any of the provisions of section 40 or 41 is liable to a penalty equal to the amount or value of the fee, compensation or reward accepted or received by him and the sum of \$500. R.S.O. 1970, c. 240, s. 42. Penalty



## LEGISLATIVE ASSEMBLY

- Breach of s. 40 a corrupt practice**      **43.** Any contravention of section 40 is a corrupt practice and a writ alleging the contravention may be issued within six months after the contravention in the same manner and the proceedings thereupon shall be the same as in the case of other actions under Part VIII of the *Election Act*. R.S.O. 1970, c. 240, s. 43, *revised*.
- R.S.O. 1980, c. 133
- Vacation of seat**      **44.** If judgment is recovered against a member of the Assembly for any penalty under section 42, or if by a resolution of the Assembly it is declared that a member has been guilty of a contravention of section 40, or if it is adjudged by the Supreme Court in an action mentioned in section 43 that a member has been guilty of a contravention of section 40, his election becomes void and his seat shall be vacated, and a writ shall issue for a new election as if he were dead and he is incapable of being elected to or of sitting in the Assembly during the remainder of the term for which he was elected. R.S.O. 1970, c. 240, s. 44, *revised*.
- Jurisdiction of Assembly**      **45.—(1)** The Assembly has all the rights and privileges of a court of record for the purposes of summarily inquiring into and punishing, as breaches of privilege or as contempts and without affecting the liability of the offenders to prosecution and punishment criminally or otherwise according to law, independently of this Act, the acts, matters and things following:
- Assaults, insults, libels**      1. Assault, insult or libel upon a member of the Assembly during a session of the Legislature or during the twenty days preceding or the twenty days following a session.
- Threats**      2. Obstructing, threatening or attempting to force or intimidate a member of the Assembly.
- Bribery and offering of fee**      3. Offering to, or the acceptance by, a member of the Assembly of a bribe to influence him in his proceedings as such, or offering to or the acceptance by a member of any fee, compensation or reward for or in respect of the drafting, advising upon, revising, promoting or opposing any bill, resolution, matter or thing submitted to or intended to be submitted to the Assembly or a committee thereof.
- Interference with officers**      4. Assault upon or interference with an officer of the Assembly while in the execution of his duty.
- Tampering with witness**      5. Tampering with a witness in regard to evidence to be given by him before the Assembly or a committee thereof.

## LEGISLATIVE ASSEMBLY

6. Giving false evidence or prevaricating or misbehaving in giving evidence or refusing to give evidence or to produce papers before the Assembly or a committee thereof. False evidence
  7. Disobedience to a warrant requiring the attendance of a witness before the Assembly or a committee thereof, or refusal or neglect to obey a warrant mentioned in section 36. Disobedience to warrant
  8. Presenting to the Assembly or to a committee thereof a forged or false document with intent to deceive the Assembly or committee. Presenting false documents
  9. Forging, falsifying or unlawfully altering a record of the Assembly or of a committee thereof, or any document or petition presented or filed or intended to be presented or filed before the Assembly or committee, or the setting or subscribing by any person of the name of another person to any such document or petition with intent to deceive. Falsifying records, etc.
  10. Taking any civil proceeding against, or causing or effecting the arrest or imprisonment of a member of the Assembly in any civil proceeding, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him before the Assembly or a committee thereof. Taking civil proceedings against member
  11. Causing or effecting the arrest, detention or molestation of a member of the Assembly for any cause or matter of a civil nature during a session of the Legislature or during the twenty days preceding or the twenty days following a session. Arresting member for debt, etc
- (2) For the purposes of this Act, the Assembly possesses all the powers and jurisdiction necessary or expedient for inquiring into, adjudging and pronouncing upon the commission or doing of the acts, matters or things mentioned in subsection (1) and for awarding and carrying into execution the punishment thereof. R.S.O. 1970, c. 240, s. 45. Jurisdiction given as to inquiring and punishing
46. Every person who, upon such inquiry, is found to have committed or done any of the acts, matters, or things mentioned in section 45, in addition to any other penalty or punishment to which he may by law be subject, is liable to imprisonment for such time during the session of the Legislature then being held as is determined by the Assembly. R.S.O. 1970, c. 240, s. 46. Punishment for contravention of s. 45

## LEGISLATIVE ASSEMBLY

Proceeding  
on contra-  
vention of  
s. 45 and  
arrest  
thereunder

**47.—(1)** Where the Assembly declares that a person has been guilty of a breach of privilege or of a contempt in respect of any of the acts, matters and things mentioned in section 45 and directs that the person be kept and detained in the custody of the sergeant-at-arms attending the Assembly, the Speaker shall issue his warrant to the sergeant-at-arms to take the person into custody and to keep and detain him in custody in accordance with the order of the Assembly.

Warrant of  
committal

**(2)** Where the Assembly directs that the imprisonment shall be in a correctional institution in the Judicial District of York, the Speaker shall issue his warrant to the sergeant-at-arms and to the superintendent of such correctional institution commanding the sergeant-at-arms to take such person into custody and to deliver him to the superintendent of such correctional institution, and commanding the superintendent to receive and keep and detain him in custody in accordance with the order of the Assembly. R.S.O. 1970, c. 240, s. 47.

Decision of  
Assembly  
final

**48.** The determination of the Assembly upon any proceeding under this Act is final and conclusive. R.S.O. 1970, c. 240, s. 48.

Protection  
of persons  
publishing  
papers by  
order of  
Assembly

**49.—(1)** Any person who is a defendant in a civil proceeding commenced in any manner for or in respect of the publication of any report, paper, vote or proceeding by such person or by his servant by or under the authority of the Assembly may bring before the court in which the proceeding is pending (first giving twenty-four hours notice of his intention so to do to the plaintiff or his solicitor) a certificate under the hand of the Speaker or of the Clerk of the Assembly, stating that the report, paper, vote or proceeding in respect whereof the proceeding has been commenced was published by such person or by his servant by order or under the authority of the Assembly together with an affidavit verifying the certificate.

Stay of  
proceedings

**(2)** The court shall thereupon immediately stay the proceeding and it and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. R.S.O. 1970, c. 240, s. 49.



## LEGISLATIVE ASSEMBLY

50.—(1) If a civil proceeding is commenced for or in respect of the publication of a copy of such report, paper, vote or proceeding, the defendant at any stage of the proceeding may lay before the court the report, paper, vote or proceeding and the copy with an affidavit verifying the report, paper, vote or proceeding and the correctness of the copy. Production of papers to court

(2) The court shall thereupon immediately stay the proceeding and it and every writ or process issued therein shall be taken to be finally put an end to, determined and superseded. R.S.O. 1970, c. 240, s. 50. Stay of proceedings

51. It is a good defence to any civil proceeding against a person for printing any extract from or abstract of any such report, paper, vote or proceeding that the extract or abstract was published *bona fide* and without malice. R.S.O. 1970, c. 240, s. 51. Bona fide publication

52. Except so far as is provided by section 40, nothing in this Act shall be construed to deprive the Assembly or a committee or member thereof of any right, immunity, privilege or power that the Assembly, committee or member might otherwise have been entitled to exercise or enjoy. R.S.O. 1970, c. 240, s. 52. Saving of privileges inherent in Assembly or members

53. Where the Assembly has adopted the report of a committee of the Assembly recommending the purchase of any publication for the use of the members of the Assembly or for other persons, the publication may be purchased by the Treasurer of Ontario and distributed according to the recommendations of the report, and the cost thereof shall be paid out of any sum appropriated by the Legislature for stationery, printing and binding. R.S.O. 1970, c. 240, s. 53, *revised*. Payment for books ordered by committee

54. At least twenty members of the Assembly are necessary to constitute a quorum for the transaction of business, and for that purpose the Speaker shall be counted. R.S.O. 1970, c. 240, s. 54. Quorum

55. Questions arising in the Assembly shall be decided by a majority of voices, other than that of the Speaker, and, when the voices are equal, the Speaker has a vote. R.S.O. 1970, c. 240, s. 55. Voting



## LEGISLATIVE ASSEMBLY

Condition  
precedent to  
appropri-  
ations

56. The Assembly shall not adopt or pass any vote, resolution, address or bill for the appropriation of any part of the Consolidated Revenue Fund, or of any tax or impost, to any purpose that has not been first recommended by a message of the Lieutenant Governor to the Assembly during the session in which the vote, resolution, address or bill is proposed. R.S.O. 1970, c. 240, s. 56.

Commis-  
sioners on  
estate bills

57. The judges of the Supreme Court are *ex officio* commissioners to report under the Rules of the Assembly in respect of estate bills. R.S.O. 1970, c. 240, s. 57.

Power of  
committees  
to examine  
on oath

58. Any standing or special committee of the Assembly may require that facts, matters and things relating to the subject of inquiry be verified or otherwise ascertained by the oral examination of witnesses, and may examine witnesses upon oath, and for that purpose the chairman or any member of the committee may administer the oath in Form 1. R.S.O. 1970, c. 240, s. 58.

Affidavits

59. Where witnesses are not required to be examined orally, an affirmation, declaration or affidavit, that is required to be made or taken by or according to any rule or order of the Assembly, or by the direction of any committee, and in respect of any matter or thing pending or proceeding before the committee, may be made and taken before the Clerk of the Assembly, the clerk of the committee, a commissioner for taking affidavits or a justice of the peace. R.S.O. 1970, c. 240, s. 59.

.....

Interpre-  
tation

R.S.O. 1980,  
c. 134

72.—(1) In this section, "Commission" means the Commission on Election Contributions and Expenses established under the *Election Finances Reform Act*.

Review of  
indemnities  
and  
allowances

(2) The Commission each year shall review and make such recommendations as it considers proper in respect of the indemnities and allowances of members of the Assembly under this Act.

Annual  
report

(3) The Commission shall report its recommendations to the Speaker and the Speaker shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. 1978, c. 98, s. 11.

## LEGISLATIVE ASSEMBLY

7

73. The Office of the Assembly shall consist of the Speaker, the Deputy Speaker, the Clerk of the Legislative Assembly, the First Clerk Assistant, the Sergeant-at-Arms, the Director of Administration and such other employees as may be required from time to time for the proper conduct of the business of the Office of the Assembly. 1974, c. 116, s. 3, *part.*

Office of  
Assembly

74.—(1) The Lieutenant Governor in Council shall appoint the Clerk of the Legislative Assembly.

Clerk of  
Legislative  
Assembly.  
appointment

(2) The Clerk of the Legislative Assembly shall hold office during good behaviour but shall be removable from office for cause by the Lieutenant Governor on address of the Assembly.

Tenure of  
office

(3) The First Clerk Assistant, the Sergeant-at-Arms and the Director of Administration shall be appointed by the Lieutenant Governor in Council upon such terms and conditions as the Speaker may recommend and the other employees of the Office of the Assembly shall be appointed by the Speaker. 1974, c. 116, s. 3, *part.*

Appointment  
of officers  
and staff

75. The Clerk of the Legislative Assembly, the First Clerk Assistant, the Sergeant-at-Arms and the Director of Administration have such duties as may be provided for, from time to time, in the Standing Orders of the Legislative Assembly or as may be prescribed by the Speaker. 1974, c. 116, s. 3, *part.*

Duties of  
officers

76.—(1) The Speaker shall present the estimates of the sums of money that will be required to be provided by the Legislature for the purposes of this Act to the Board of Internal Economy who shall review such estimates and make such alterations as it considers proper, and shall thereafter concur in such estimates.

Estimates,  
submission  
to Board.

(2) The Speaker shall cause the estimates to be laid before the Assembly. 1974, c. 116, s. 3, *part.*

Laid before  
Assembly

77.—(1) The Speaker shall establish, maintain and be accountable for a fund to be known as the Legislative Assembly Fund.

Legislative  
Assembly  
Fund

(2) The Speaker shall maintain an account with the Province of Ontario Savings Office or with any chartered bank designated by the Board of Internal Economy for the deposit of moneys paid into the Legislative Assembly Fund.

Bank  
account

## LEGISLATIVE ASSEMBLY

Fiscal year	(3) The fiscal year for the Legislative Assembly Fund shall be the same as the fiscal year for the Consolidated Revenue Fund.
Record	(4) The Speaker shall keep a record of all moneys received for or disbursed from the Legislative Assembly Fund.
Annual report	(5) The Speaker shall make an annual report to the Board of Internal Economy respecting the receipts and disbursements from the Legislative Assembly Fund. 1974, c. 116, s. 3, <i>part</i> .
Moneys paid into Fund	78. The moneys required from time to time for the purposes of this Act shall be paid out of moneys appropriated by the Assembly for the purposes of this Act and shall be paid into the Legislative Assembly Fund by the Treasurer of Ontario upon the requisition, from time to time, of the Speaker. 1974, c. 116, s. 3, <i>part</i> .
Where moneys required before appropriated	79.—(1) When, because the Legislature is adjourned, prorogued or dissolved or because the urgency of other public business prevents the Legislature from considering estimates or supplementary estimates, moneys are urgently required for the purposes of this Act before they have been appropriated, the Treasurer of Ontario may, subject to the approval of the Lieutenant Governor in Council, advance the required moneys for the use of the Speaker upon the written request of the Board of Internal Economy, and such moneys shall be paid into the Legislative Assembly Fund.
Advances repayable out of moneys to be appropriated	(2) All moneys advanced by the Treasurer of Ontario under subsection (1) shall be deemed to be an interest free loan repayable from moneys to be appropriated by the Legislature for the purposes of this Act. 1974, c. 116, s. 3, <i>part</i> .
Form of payments out of Fund	80.—(1) Every payment out of the Legislative Assembly Fund shall be made by cheque, which shall be signed by the Speaker or the Deputy Speaker and by the Director of Administration or such other person who is for the time being authorized by the Speaker to sign cheques.
Signature	(2) The Speaker may authorize the use of facsimile signatures on cheques to be affixed thereto by printing, lithographing, engraving or by other mechanical means.



(3) The Speaker, with the approval of the Provincial Auditor, may authorize the destruction, from time to time, of paid and cancelled cheques. 1974, c. 116, s. 3, *part.*

Destruction  
of cancelled  
cheques

81.—(1) During the period of thirty days next following the end of a fiscal year there may be paid out of the Legislative Assembly Fund an amount, not exceeding the unexpended balance in the Fund at the end of such fiscal year, for the purpose of discharging any debt or obligation that was incurred during such fiscal year, and the expenditure may be charged in the accounts of such fiscal year, but any debts or obligations that remain undischarged at the end of such period of thirty days shall be paid out of the Legislative Assembly Fund for the ensuing fiscal year.

Payment of  
debts  
incurred  
in fiscal  
year

(2) All moneys that remain unexpended in the Legislative Assembly Fund after the thirty day period next following the end of a fiscal year shall be paid to the Treasurer of Ontario and become part of the Consolidated Revenue Fund. 1974, c. 116, s. 3, *part.*

Unexpended  
moneys to  
be paid to  
Treasurer

82.—(1) Any member of the Assembly or the Chairman or Secretary of a committee of the Assembly may apply to the Speaker and the Speaker may authorize an accountable advance out of the Legislative Assembly Fund for the purpose of meeting disbursements for travel or other contingencies, or making payments on account of expenses incurred or to be incurred.

Accountable  
advances

(2) If, at the termination of the fiscal year in which an advance was made, no accounting or repayment of the advance has been received, such advance shall be accounted for or repaid within fifteen days thereafter. 1974, c. 116, s. 3, *part.*

Idem

83. The accounts and financial transactions of the Office of the Assembly shall be audited annually by the Provincial Auditor. 1974, c. 116, s. 3, *part.*

Audit

84.—(1) There shall be a Board of Internal Economy composed of,

Board of  
Internal  
Economy,  
composition

(a) the Speaker, who shall be the chairman;

(b) three commissioners appointed by the Lieutenant Governor in Council from among the members of the Executive Council; and

(c) three commissioners appointed,



## LEGISLATIVE ASSEMBLY

- (i) one from the caucus of the Government, by that caucus,
- (ii) one from the caucus of the Official Opposition, by that caucus, and
- (iii) one from the caucus of the party having the third largest membership in the Assembly other than a party referred to in subclauses (i) and (ii), by that caucus,

and the name of each person appointed shall be communicated to the Speaker within ten days after being appointed.

(2) The name and office of each member appointed as a commissioner shall be communicated by message from the Lieutenant Governor in Council to the Assembly.

Names of  
appointees  
to be  
communi-  
cated  
to Assembly

Quorum

(3) A quorum of the Board consists of the Speaker, one commissioner appointed from among the members of the Executive Council and one other commissioner. 1974, c. 116, s. 3, *part*.

Procedures

85. The Board of Internal Economy may determine its rules and methods of procedure and shall keep a minute book in which shall be recorded the proceedings of the Board. 1974, c. 116, s. 3, *part*.

Board may  
require  
monthly  
statements

86. The Board of Internal Economy may require any office, agency, commission or select committee of the Assembly whose estimates of moneys required are subject to review by the Board to submit to the Board on a monthly basis statements that set out current expenditures and forecast future expenditures and every such office, agency, commission and select committee shall submit the statements when so required. 1977, c. 69, s. 2.

Powers and  
duties of  
Board

87. The Board of Internal Economy has the power and duty,

- (a) to review estimates and forecasts, analyses of revenues, expenditures, commitments and other data pertaining to the Office of the Assembly and to assess the results thereof;
- (b) to approve the organization and staff establishment for the Office of the Assembly;
- (c) to approve and review administrative policies and procedures in relation to the operation of the Office of the Assembly;

## LEGISLATIVE ASSEMBLY

- (d) to advise upon all matters related to the management, administration, accounting and collection and disbursement of moneys associated with the Legislative Assembly Fund;
- (e) to advise upon the retention and disposal of records except cancelled cheques; and
- (f) to advise upon and give directions in relation to any matter the Board considers necessary for the efficient and effective operation of the Office of the Assembly,

and, if considered desirable, it may report on any of such matters to the Assembly. 1974, c. 116, s. 3, *part.*

88. The Board of Internal Economy may authorize the transfer of moneys from one item of the estimates of the Office of the Assembly to another item within the same vote and the Provincial Auditor shall make special mention in his report of any transfer under this section. 1974, c. 116, s. 3, *part.*

Transfer  
of moneys  
within  
vote

89.—(1) Subject to the approval of the Board of Internal Economy, the Speaker may,

Regulation  
of terms  
and condi-  
tions of  
employment

- (a) establish job classifications and salary ranges;
- (b) provide a system of cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits;
- (c) provide for the establishment of plans for group life insurance, medical-surgical insurance or long-term income protection;
- (d) provide for the granting of leave of absence; and
- (e) prescribe any other terms and conditions of employment,

for employees of the Office of the Assembly.

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to the matters referred to in clauses (1) (b), (c) and (d) apply or continue to apply, as the case may be, to the permanent and full-time employees of the Office of the Assembly until a plan or system in relation to the same subject-matter is provided by the Speaker under this Act, and where any such benefits are provided for in regulations made under the

Application  
of employee  
benefits of  
public  
servants

## LEGISLATIVE ASSEMBLY

*Public Service Act*, the Speaker, or any person authorized in writing by him, may exercise the powers and duties of a Minister or Deputy Minister or of the Civil Service Commission under such regulations. 1974, c. 116, s. 3, *part*.

Pension  
R.S.O. 1980,  
c. 419

**90.** The *Public Service Superannuation Act* applies to the permanent employees and full-time probationary employees of the Office of the Assembly as though the Office of the Assembly was a board designated by the Lieutenant Governor in Council under section 28 of that Act, and all credits in the Public Service Superannuation Fund of persons appointed as permanent employees of the Office of the Assembly accumulated under that Act before they became employees of the Office of the Assembly, are preserved and continued in accordance with that Act. 1974, c. 116, s. 3, *part*.

Interpre-  
tation

**91.** In sections 91a to 91f, "senior officer" means the Clerk of the Legislative Assembly, the Director of Administration or the Director of the Legislative Library, Research and Information Services.

Discipline

**91a.**—(1) The Speaker may dismiss, suspend or reprimand for misconduct an employee of the Office of the Assembly appointed by the Speaker.

Idem

(2) The Speaker may suspend or reprimand for misconduct an employee of the Office of the Assembly, other than the Clerk of the Legislative Assembly, appointed by the Lieutenant Governor in Council.

Idem

(3) The Speaker may recommend to the Lieutenant Governor in Council the dismissal for misconduct of an employee of the Office of the Assembly, other than the Clerk of the Legislative Assembly, appointed by the Lieutenant Governor in Council.

Recommen-  
dation  
to Speaker

**91b.**—(1) The senior officer of a division of the Office of the Assembly may recommend to the Speaker that the Speaker proceed under section 91a in respect of an employee employed in the division.

Notice of  
proposed  
recommen-  
dation

(2) The senior officer shall give to the employee written notice of the proposed recommendation and shall receive and consider the submissions, if any, of the employee before making such recommendation to the Speaker as the senior officer considers appropriate.

Notice by  
Speaker

**91c.**—(1) Before acting under section 91a in respect of an employee, the Speaker shall give to the employee written notice of the proposed action.



## LEGISLATIVE ASSEMBLY

<p>(2) A notice under subsection (1) shall inform the employee that the employee is entitled to a hearing by a hearing board if the employee gives to the Speaker, within fifteen days after the Speaker's notice is given to the employee, written notice requiring a hearing and the employee may so require such a hearing.</p>	Content of notice
<p><b>91d.</b>—(1) Where the employee requires a hearing by a hearing board in accordance with section 91c, the Speaker shall refer the matter to a hearing board.</p>	Referral to hearing board
<p>(2) Where the employee does not require a hearing by a hearing board in accordance with section 91c, the Speaker may carry out the action proposed in the Speaker's notice given to the employee.</p>	Where hearing not required
<p><b>91e.</b>—(1) A hearing board shall be composed of a chairman, one member representing the Office of the Assembly and one member representing the employee who required the hearing.</p>	Composition of hearing board
<p>(2) The Speaker shall appoint the chairman of a hearing board after requesting and considering the views of the chairman of the Public Service Grievance Board.</p>	Appointment of chairman
<p>(3) The Speaker shall appoint as a member of the hearing board a senior officer of the Office of the Assembly other than the senior officer of the division in which the employee is employed.</p>	Appointment of member by Speaker
<p>(4) The Speaker shall give written notice to the employee to appoint a member of the hearing board and the employee within ten days after receiving the notice,</p>	Appointment of member by employee
<p>(a) shall appoint as a member of the hearing board a person who has indicated his or her willingness to act; and</p>	
<p>(b) shall give written notice to the Speaker and to the chairman of the hearing board of the name and address of the member.</p>	
<p>(5) Where the employee fails to appoint a member of the hearing board or to give the written notice required by subsection (4) within the period of ten days mentioned in that subsection, the Speaker shall appoint as a member such person as the Speaker considers suitable, but a person who is an employee of the Office of the Assembly is not eligible for appointment under this subsection.</p>	Where employee fails to appoint member



## LEGISLATIVE ASSEMBLY

Remuneration  
and expenses

(6) The chairman of a hearing board and the member of the hearing board appointed by or for the employee who required the hearing by the hearing board shall be paid such remuneration and expenses on a per diem or other basis as the Board of Internal Economy may fix.

Duties of  
hearing  
board

(7) A hearing board shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the employee is guilty of misconduct.

Recommen-  
dation  
by hearing  
board

(8) A hearing board that determines that an employee is guilty of misconduct shall recommend to the Speaker the penalty to be imposed under section 91a.

## Idem

(9) A hearing board that determines that an employee is not guilty of misconduct shall recommend to the Speaker that no penalty be imposed under section 91a.

Duty of  
Speaker

(10) The Speaker shall carry out the recommendation of the hearing board under subsection (8) or (9).

Rules of  
procedure

(11) The following rules apply to proceedings before a hearing board:

1. The parties to the proceedings are the Office of the Assembly and the employee whose conduct is the subject of the proceedings.
2. Each party shall afford to the other party an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.
3. The chairman and members of the hearing board must not have taken part before the hearing in any investigation of the subject-matter of the hearing other than in considering the referral of the matter to the Speaker or to a hearing board.
4. The chairman and members of the hearing board shall not communicate directly or indirectly in relation to the subject-matter of the proceedings with any person or with a party or a representative of a party except upon notice to and opportunity for both parties to participate.

## LEGISLATIVE ASSEMBLY

5. The hearing board may seek legal advice from a person who is not an adviser to a party, but the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.
6. The oral evidence taken before the hearing board shall be recorded and a party is entitled to a copy of a transcript thereof upon the same terms as in the Supreme Court.
7. The chairman or a member of the hearing board shall not participate in the decision of the hearing board pursuant to the hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.
8. The hearing board shall, upon the request of the person who produced them, release documents and things put in evidence to the person within a reasonable time after the matter has been concluded by the hearing board.

**91f.** A notice or document required under sections 91a to 91e is sufficiently given, served or delivered if delivered personally or by registered mail, and there is a rebuttable presumption that a notice or document sent to a person by registered mail addressed to the person at the last address of the person in the records of the Office of the Assembly is delivered to the person on the tenth day after the day of mailing. 1974, c. 116, s. 3, part; 1983, c. 50, s. 9.

Notice

**92.—(1)** Every employee of the Office of the Assembly shall, before any salary is paid to him, take and subscribe before the Speaker, the Clerk of the Legislative Assembly, or a person designated in writing by either of them, an oath of office and secrecy in Form 2.

Oath of office

(2) Every employee of the Office of the Assembly shall, before performing any duty as a member of the Office of the Assembly, take and subscribe before the Speaker or before the Clerk of the Legislative Assembly, or a person designated in writing by either of them, an oath of allegiance in Form 3. 1974, c. 116, s. 3, part.

Oath of allegiance

## LEGISLATIVE ASSEMBLY

Application of  
R.S.O. 1980,  
c. 539

93. The Speaker in his capacity as head of the Office of the Assembly shall be deemed to be an employer within the meaning and for the purposes of the *Workmen's Compensation Act*. 1974, c. 116, s. 3, *part*.

Part of  
Legislative  
Building  
under  
Speaker

94.—(1) Such parts of the Legislative Building as may be designated by the Lieutenant Governor in Council in addition to the Legislative Chamber shall be under the control of the Speaker and the order in council shall be laid before the Assembly.

Security  
guidelines

(2) The Speaker shall establish guidelines for the security of the Legislative Chamber and the other parts of the Legislative Building that are under his control.

Enforcement

(3) The security of the parts of the Legislative Building designated to be under the control of the Speaker shall be enforced by the same personnel that enforce security in the other parts of the Legislative Building. 1974, c. 116, s. 3, *part*.

Provision  
of services  
for Assembly

95. The Speaker may call upon any ministry or agency of the Crown to provide any service or commodity for or on behalf of the Assembly that the Speaker considers necessary and the ministry or agency shall provide such service or commodity upon such terms and conditions as the ministry or agency may require. 1974, c. 116, s. 3, *part*.

Conflict with  
other Acts  
R.S.O. 1980,  
cc 254, 161,  
291

96. In the event of a conflict between any provision of this Act and any provision of the *Management Board of Cabinet Act*, the *Financial Administration Act* or the *Ministry of Treasury and Economics Act*, the provision of this Act prevails. 1974, c. 116, s. 3, *part*.

Act  
administered  
by Speaker

97. The Speaker is responsible for the administration of this Act. 1974, c. 116, s. 3, *part*.

Delegation  
of duties

98. The Speaker may, in writing, delegate to the Deputy Speaker or to any employee in the Office of the Assembly any of his powers and duties under sections 73 to 99. 1974, c. 116, s. 3, *part*.

Agreements

99.—(1) The Speaker, for and on behalf of the Office of the Assembly, may enter into any agreement that he considers advisable for the purposes of carrying out the provisions of this Act.



## LEGISLATIVE ASSEMBLY

(2) Any agreement entered into by the Speaker, or by any person duly authorized by him, enures to the benefit of the Assembly. Agreements enure to benefit of Assembly

(3) The Speaker or his delegate is not personally liable for any agreement that he has entered into under this section. Speaker not personally liable

(4) The Speaker, for and on behalf of the Office of the Assembly, may sue in the name of the Attorney General. Actions brought in name of Attorney General  
1974, c. 116, s. 3, *part.*

## FORM 1

(Section 58)

## OATH OF WITNESSES

The evidence you shall give to this Committee touching the subject of the present inquiry shall be the truth, the whole truth, and nothing but the truth. So help you God.

R.S.O. 1970, c. 240, Form 2.

## FORM 2

(Section 92)

I, .....,  
do swear that I will faithfully discharge my duties as an employee of the Office of the Assembly and will observe and comply with the laws of Canada and Ontario, and, except as I may be legally required, I will not disclose or give to any person any information or document that comes to my knowledge or possession by reason of my being an employee of the Office of the Assembly.

So help me God

1974, c. 116, s. 4, *part.*

## FORM 3

(Section 92)

I, .....,  
do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second (or the reigning sovereign for the time being), her heirs and successors according to law

So help me God.

1974, c. 116, s. 4, *part.*





## REPRESENTATION

### Introduction

Members of the Legislative Assembly have to be elected pursuant to existing legislation of Ontario concerning representation. A large portion of this legislation deals with the electoral procedure, and thus extends beyond the scope of constitutional law. This chapter includes only the main provisions of the system of representation of the population of Ontario, providing a brief description of each statute dealing with this question. Except when specified, the statutes described below are not reproduced in this collection:

1. Elections Act, R.S.O. 1980, c. 133.

Note: This statute, reproduced only in part below, contains the important elements of the electoral system of Ontario. Among provisions not reproduced are those relating to corrupt practices and controverted elections.

2. Representation Act, R.S.O. 1980, c. 450.

Note: This statute specifies the composition of the Legislative Assembly and defines the boundaries of each of the 125 electoral districts of Ontario.

3. Election Finances Reform Act, R.S.O., c. 134.

Note: This statute deals with the provincial Commission on Election Contributions and Expenses. It requires the registration with the Commission of political parties, constituency associations, and candidates who want to accept contributions and pay election expenses. It limits the amount of contributions and expenses, and specifies various sanctions for offences of the provisions of this act.

### Selected references:

Drummond, R.J., "Voting Behaviour: The Blueing of Ontario," in MacDonald, Donald C., ed., Government

and Politics of Ontario, Toronto, Macmillan, 1975,  
pp. 293-316.

Surich, Jo, "Keeping Them Honest: Election Reform in  
Ontario," in MacDonald, Donald C., ed., Government  
and Politics of Ontario, op. cit., pp. 348-363.

Wearing, Joseph, "Ontario Political Parties: Fish or  
Fowl?," in MacDonald, Donald C., ed., Government  
and Politics of Ontario, op. cit., pp. 317-347.

## LA REPRÉSENTATION

### Introduction

Les membres de l'Assemblée législative doivent être élus en conformité de la législation ontarienne existante en matière de représentation. Comme une partie importante de cette législation porte sur la procédure et déborde le cadre du droit constitutionnel, le présent chapitre se limite à dégager les principales caractéristiques du système de représentation de la population ontarienne par la présentation d'un bref résumé de chaque loi relative à cette question. Sauf indication au contraire, les lois ci-après résumées ne sont pas reproduites:

1. Election Act, R.S.O. 1980, c. 133

Note: Cette loi, reproduite en partie, définit les caractéristiques fondamentales du système électoral ontarien. Parmi les dispositions non reproduites, il y a celles relatives aux manoeuvres frauduleuses et aux contestations d'élections.

2. Representation Act, R.S.O. 1980, c. 450

Note: Cette loi détermine la composition de l'Assemblée législative et délimite chacune des 125 circonscriptions électorales de l'Ontario.

3. Election Finances Reform Act, R.S.O. 1980, c. 134

Note: Cette loi crée une commission provinciale des contributions et dépenses électorales. Elle soumet à la formalité de l'enregistrement auprès de cette commission les partis politiques, les associations de circonscription et leurs représentants qui désirent recevoir des contributions et effectuer des dépenses électorales. Elle limite le montant de ces contributions et dépenses et prévoit diverses sanctions pénales en cas d'infraction à la loi.

### Sources choisies

- Drummond, R.J., "Voting Behaviour: the Blueing of Ontario", dans Donald C. MacDonald, Government and Politics of Ontario, Toronto, Macmillan, 1975, pp. 293-316.
- Surich, Jo, "Keeping Them Honest: Election Reform in Ontario", dans Donald C. MacDonald, op. cit., pp. 348-363.
- Wearing, Joseph, "Ontario Political Parties: Fish or Fowl?", dans Donald C. MacDonald, op. cit., pp. 317-347.





ELECTION ACT

R.S. 1980, c. 133

Note:

This statute contains some 160 sections. Only sections dealing with the following matters are reproduced below:

- a) Persons excluded from being returning officers: section 6;
- b) Qualification and disqualification from voting: sections 10 to 13;
- c) Vote by proxy: section 38;
- d) Qualification and nomination of candidates: sections 39, 40, 42(2), and 44;
- e) Secrecy of voting: sections 65 to 72;
- f) Time to employees for voting: section 93;
- g) Some penalties in case of corrupt practice: section 146, 147, and 156; and
- n) Election expenses: sections 161 to 163.

In addition to this statute, one should also consult provisions of the Legislative Assembly Act, reproduced above, dealing with the qualifications of members of the Legislative Assembly, and the ineligibility of certain persons to perform this function. It would also be useful to consult regulations issued in pursuance of this statute listed in the cumulative index of Ontario Regulations, entitled "Table of Regulations".

## ELECTION ACT

R.S.O. 1980, c. 133

### Note:

- Cette loi renferme quelque 160 articles. Seuls sont reproduits les articles portant sur les questions suivantes:
- a) les personnes inhabiles à agir comme officiers d'élection: art. 6
  - b) la qualité de voteur et l'inhabilité à voter: art. 10 à 13
  - c) le vote par procuration: art. 38
  - d) l'éligibilité des candidats et la mise en nomination: art. 39, 40, 42(2) et 44
  - e) le secret du vote: art. 65 à 72
  - f) le temps accordé aux employés pour voter: art. 93
  - g) certaines sanctions en cas de corruption électorale: art. 146, 147, 156
  - h) les dépenses électorales: art. 161 à 163.

Outre la présente loi, il y aurait lieu de consulter les dispositions du Legislative Assembly Act, déjà reproduit, portant sur les qualifications requises pour être membre de l'Assemblée législative et sur l'inéligibilité de certaines personnes à remplir cette fonction. Il peut être utile aussi de consulter les règlements établis en vertu de la présente loi et signalés dans l'index cumulatif intitulé "Table of Regulations" des Ontario Regulations, complété par l'index annuel intitulé "Permanent Index" des Ontario Regulations.

## Election Act

.....

6.—(1) The following persons shall not be appointed or act as a returning officer, election clerk, deputy returning officer or poll clerk: Persons excluded from being returning officers, etc.

1. Members of the Executive Council.
2. Crown Attorneys and Clerks of the Peace.
3. Members of the Parliament of Canada or of the Assembly.
4. Judges of federal or provincial courts.
5. Persons who have served as members of the Assembly in the session next preceding the election or, if a by-election takes place during a session of the Assembly, persons who are serving in that session.
6. Persons who have at any time been found guilty of a corrupt practice.

(2) A contravention of this section does not affect the validity of the election. R.S.O. 1970, c. 142, s. 5. Validity of election not affected

.....

### QUALIFICATION OF VOTERS

10.—(1) In any electoral district in which an election to the Assembly is held, every person who, at the time of voting, Who may vote

- (a) has attained eighteen years of age;
- (b) is a Canadian citizen or other British subject;
- (c) is not disqualified under this Act or otherwise prohibited by law from voting;
- (d) has resided in Ontario for the twelve months next preceding the day of polling; and
- (e) resides in the electoral district,



ELECTION

is qualified to vote at such election. R.S.O. 1970, c. 142, s. 9 (1); 1971, c. 98, s. 4, Sched. par. 12.

Evidence of  
citizenship

(2) For the purpose of this section, a statutory declaration by a person claiming to be a Canadian citizen or other British subject is *prima facie* evidence of the facts declared to. R.S.O. 1970, c. 142, s. 9 (2).

Judges  
disqualified

11. No judge of any court is qualified to vote in any election. 1974, c. 82, s. 1.

Disqualifi-  
cation of  
certain  
officers

12. No returning officer or election clerk is entitled to vote, but this provision does not affect the duty of the returning officer to give a casting vote. R.S.O. 1970, c. 142, s. 10.

Disqualifi-  
cation of  
convicts,  
mentally ill  
persons, etc

13. Persons who are prisoners in penal or reform institutions, or who are patients in mental hospitals, or who have been transferred from mental hospitals to homes for special care as mentally incompetent are disqualified from voting. R.S.O. 1970, c. 142, s. 11.

.....

PROXIES

Who may  
vote by  
proxy

38.—(1) Any qualified voter who is entered on the list of voters for a polling subdivision and who is,

R.S.C. 1970,  
c. N-4

- (a) a member of the regular forces of the Canadian Forces or a member of the reserve forces of the Canadian Forces when on active service as defined by the *National Defence Act*; or
- (b) a person who expects to be absent from his polling subdivision during the election period including the advance poll and polling day by reason of his being engaged for hire or reward in the business of transportation by railway, air, water, or motor vehicle; or
- (c) a person certified by a legally qualified medical practitioner, by certificate filed with the returning officer, to be physically incapable of attending a polling place; or

## ELECTION

- (d) a person absent from his regular residence by reason of attending an educational institution, who is entered on the list for the polling subdivision in which he normally resides and who expects by reason of such absence to be unable to vote at the advance poll or on polling day,

may vote by proxy in that polling subdivision. R.S.O. 1970, c. 142, s. 35 (1); 1971, c. 100, s. 5 (1).

(2) Any person who is entitled to vote at an election by proxy under this section may appoint in writing a proxy who shall be a qualified voter in the electoral district in which such person is entitled to vote and who, unless such proxy is the child, grandchild, brother, sister, parent, grandparent, husband or wife of such person, has not been appointed a proxy for any other voter qualified to vote at such election. 1971, c. 100, s. 5 (2).

Appointment  
of proxy

(3) The appointment of a proxy shall name the person authorized to vote at an election for which a writ has been issued for the electoral district, and no appointment of a proxy is valid unless it is made after the date of the issue of the writ of election or remains in force after polling day. R.S.O. 1970, c. 142, s. 35 (3).

Term of  
appointment

(4) A person who has been appointed a voting proxy may apply to the returning officer or assistant revising officer to be entered upon the list for the polling subdivision in which the person appointing the proxy is entitled to vote.

Application  
of proxy to  
be entered  
on list

(5) The returning officer or assistant revising officer on any day up to and including the last day of the revision shall take evidence on oath as to the right of the person appointing the proxy to vote in the subdivision upon the list for which his name is entered and as to the qualifications of the voting proxy, and, if he finds that the person appointing the proxy is duly qualified and that the voting proxy is qualified to act for the person appointing the proxy, he shall give a certificate across the face of the appointment of the voting proxy to that effect and shall cause the name of the voting proxy to be entered on the polling list after the name of the person appointing the proxy. 1971, c. 100, s. 5 (3).

Evidence to  
be taken by  
returning  
officer or  
assistant

(6) Not more than one person shall be appointed a voting proxy on behalf of a person appointing the proxy at any election.

Not more  
than one  
proxy

ELECTION

Oath on voting	(7) A ballot shall not be delivered to a person who claims to vote as a voting proxy unless he produces his appointment as a voting proxy to the deputy returning officer with the certificate of the returning officer thereon as provided in subsection (5) and takes the prescribed oath.
Record of voting by proxy	(8) The deputy returning officer shall record in the poll book the fact that the person appointing the proxy voted by proxy and the name of the proxy, and shall file the proxy and certificate with the election papers and return them to the returning officer in the envelope provided for that purpose.
Proxy may vote in own right	(9) A person who has been appointed as a voting proxy is entitled to vote in his own right in the electoral district notwithstanding that he has voted as a proxy. R.S.O. 1970, c. 142, s. 35 (6-9).

CANDIDATES

QUALIFICATION

	39. Every person who,
Who may be candidate	(a) is of voting age;
	(b) is a Canadian citizen or other British subject;
	(c) has resided in Ontario for the twelve months next preceding the day of polling; and
R.S.O. 1980, c. 235	(d) is not disqualified by the <i>Legislative Assembly Act</i> or by any other Act,
	is qualified to be a candidate. R.S.O. 1970, c. 142, s. 36.

Who may not be candidate	40.—(1) No person who has been engaged as a returning officer, an assistant revising officer or an enumerator in the preparation of the lists of voters to be used at an election is eligible as a candidate at the election. 1971, c. 100, s. 6.
Idem	(2) No person who has been found guilty within eight years of an election of a corrupt practice or of an offence relating to an election is eligible to be a candidate at the election. R.S.O. 1970, c. 142, s. 37 (2)

.....



## ELECTION

## NOMINATION

42.(1)

.....

(2) The nomination shall be by writing signed by at least 100 duly qualified electors of the electoral district and stating the name, residence and occupation or description of the person proposed in such manner as will identify him sufficiently, and a person shall be deemed to be a duly qualified elector if he is qualified to be entered on the list of voters as entitled to vote at the election.

Nominations  
to be in  
writing

.....

44. If only one candidate is nominated or if by the withdrawal of persons nominated there remains only one candidate, the returning officer, at the expiration of the time in which nominations may be received, shall close the election and openly proclaim such candidate to be duly elected. R.S.O. 1970, c. 142, s. 41.

Election by  
acclamation

.....

## SECRECY OF PROCEEDINGS

65. In addition to the deputy returning officer, the poll clerk, the constable or constables, the candidates and their official agents and not more than one scrutineer for each candidate at any one time shall be permitted to remain in the polling place during the time the poll remains open and at the counting of the votes. R.S.O. 1970, c. 142, s. 62.

Who may be  
in polling  
places

66. No person shall communicate any information obtained at a polling place as to the candidate for whom a voter at the polling place is about to vote or has voted. R.S.O. 1970, c. 142, s. 63.

Communi-  
cating  
information  
as to how a  
voter is  
voting

67. No person shall interfere or attempt to interfere with a voter when the voter is marking his ballot, or attempt to obtain at the polling place information as to the candidate for whom a voter is about to vote or has voted. R.S.O. 1970, c. 142, s. 64.

Interference  
with voters



ELECTION

**Exclusion from balloting compartment**      **68.** Subject to section 87, while a voter is in a compartment for the purpose of marking his ballot, no other person shall be allowed to enter the compartment or to be in a position from which he can see for whom the voter marks his ballot. R.S.O. 1970, c. 142, s. 65.

**Inducing voter to display ballot after marking**      **69.** No person shall, directly or indirectly, induce or attempt to induce a voter to show his ballot after he has marked it so as to make known to any person the name of the candidate for whom he has voted. R.S.O. 1970, c. 142, s. 66.

**Voter not to display marked ballot**      **70.** Subject to section 87, a voter shall not show his ballot, when marked, to any person so as to allow the name of the candidate for whom he has voted to be known. R.S.O. 1970, c. 142, s. 67.

**Oath of secrecy**      **71.** Every returning officer and every deputy returning officer, clerk, constable, official agent, scrutineer and other person authorized to attend at a polling place, or at the counting of the votes, shall before entering on his duties take the prescribed oath of secrecy. R.S.O. 1970, c. 142, s. 68.

**No one compellable to disclose his vote**      **72.** A person who has voted shall not in any legal proceeding be compelled to state for whom he voted. R.S.O. 1970, c. 142, s. 69.

.....

TIME FOR VOTING

**Employees to have three consecutive hours for voting**      **93.—(1)** Where, by reason of the hours of his employment, an employee who is a qualified voter will not have three consecutive hours to vote while the polls are open on a polling day at an election, his employer shall, at the convenience of the employer, allow the employee such time for voting as is necessary to provide the three consecutive hours.

**Deduction from pay prohibited**      **(2)** No employer shall make any deduction from the pay of any such employee or exact from him any penalty by reason of absence from his work during the time allowed by the employer for voting. R.S.O. 1970, c. 142, s. 90.

.....

## ELECTION

146.—(1) Where a candidate at an election, or his official agent, is convicted of committing a corrupt practice, the candidate is ineligible to stand as a candidate at any election up to and including the next general election, or to hold any office at the nomination of the Crown or the Lieutenant Governor in Council for five years following the date of the official return and, if the corrupt practice is committed by the official agent, he is also liable to such penalties and disabilities.

Disqualifica-  
tion of  
persons  
guilty of  
corrupt  
practice

(2) If, when the candidate or his official agent is convicted of committing a corrupt practice, the presiding judge finds that the act constituting in law a corrupt practice was committed without any corrupt intent, the candidate or official agent is not subject to the penalties and disabilities provided by subsection (1). 1971, c. 100, s. 9, *part*.

Limitation

147. The Chief Election Officer, in addition to any other requirements of this Act with respect to the tabling of the results of an election, shall report to the Assembly whether or not in his opinion the conduct of the election was free or otherwise of any of the actions which are declared to be offences or corrupt practices under this Act. 1971, c. 100, s. 9, *part*.

Report re  
conduct of  
election

.....

156.—(1) Where it is determined that the successful candidate, or his official agent, is guilty of a corrupt practice, the court may declare his election void.

Successful  
candidate  
guilty of  
corrupt  
practice

(2) Where the election of any person is declared void, the court may order that he be removed from office and, if it is determined that any other person was elected, that he be admitted to take his seat in the Assembly or, if it is determined that no other person is elected, the court may provide for the holding of a new election.

Unseating  
and seating  
of another  
elected  
candidate

(3) Where it is determined that any person is guilty of a corrupt practice and that the commission of the corrupt practice affected the result of the election, the court may declare the election void and provide for holding a new election.

Where  
commission  
of corrupt  
practice  
affected  
result of  
election

(4) Where it is determined that a person elected has become disqualified or has forfeited his seat, the court may order that he be removed from office and provide for the holding of a new election.

Unseating of  
disqualified  
person

## ELECTION

Where act  
of election  
official  
affected  
result of  
election

(5) Where it is determined that any act or omission of an election official affected the result of an election, the court may declare the election void and provide for holding a new election.

Compensa-  
tion of  
candidates  
where  
election void

(6) Where a new election is ordered, the court may make such order as it considers just, against any person who is found guilty of an offence or a corrupt practice under this Act, for the compensation of candidates at the void election, not exceeding \$10,000 per candidate.

Judgment to  
Legislative  
Assembly

(7) The Registrar of the Supreme Court shall forward the judgment and the reasons for judgment to the Assembly through the Clerk of the Assembly. 1971, c. 100, s. 9, *part.*

.....

## ELECTION EXPENSES AND FEES

Payments  
not to be  
made  
except  
through  
official  
agent

161.—(1) No payment, except with respect to the personal expenses of a candidate, and no advance, loan or deposit shall be made by or on behalf of a candidate before, during or after the election, on account of the election, otherwise than through his official agent. R.S.O. 1970, c. 142, s. 158 (1); 1975, c. 12, s. 55 (1).

Interpre-  
tation

(2) In this section, "personal expenses", which may be lawfully paid by a candidate personally, includes the following expenses:

1. Reasonable and ordinary rent for hire of halls or other places used by the candidate personally in which to address public meetings of voters, and the expenses incurred in heating, lighting and cleaning such halls or other places.
2. Reasonable and ordinary travelling and living expenses of the candidate.
3. Reasonable and ordinary travelling and living expenses of one speaker for each meeting who accompanies the candidate and travels with him for the purpose of speaking at a public meeting to be addressed by the candidate.
4. Reasonable and ordinary charges for the hire of conveyances for the use of the candidate.
5. Reasonable and ordinary charges for use by the candidate personally of not more than one conveyance on the polling day.



## ELECTION

(3) The onus of showing that the personal expenses paid by the candidate were fair, reasonable and proper and not in excess of what is ordinarily paid for similar services and accommodation is upon the candidate. Burden of proof

(4) The contracting for or the receipt of the ordinary and reasonable charges, Receipt of ordinary and reasonable charges when not to disqualify voter

(a) by the owner or possessor of a hall or room in which to hold public meetings for the purposes of the election;

(b) by a printer for printing lists of voters, election addresses or advertisements or notices of election meetings; or

(c) by a regularly established livery-keeper for the hire of vehicles used in connection with and for the proper purposes of the election and not for carrying voters otherwise than by the candidate as provided by paragraph 5 of subsection (2),

is lawful and does not disqualify him from voting. R.S.O. 1970, c. 142, s. 142 (2-4); 1971, c. 100, s. 10, *part*.

**162.**—(1) Every person who has any claim against a candidate for or in respect of an election shall send it, within sixty days from the day of the declaration of the result of the election, to the official agent of the candidate, otherwise he is barred of his right to recover it. Claims on candidates

(2) In case of the death within such period of the person having the claim, his legal representative shall send it, within one month after probate or administration has been obtained, to the official agent of the candidate, otherwise the right to recover it is barred. Case of death of person making claim

(3) In the case of the death of the official agent or of his incapacity to act and no other agent having been appointed, the claim may be sent to the candidate. Case of death of agent

(4) No such claim shall be paid without the authority of the candidate. R.S.O. 1970, c. 142, s. 143; 1971, c. 100, s. 10, *part*. Candidate must authorize payment



ELECTION

Payment of  
accounts

163.—(1) Notwithstanding section 162, any claim that would have been payable if sent within sixty days of the day of the declaration of the result of the election may be paid by the candidate through his official agent after that time if the claim is approved by a judge of the Supreme Court.

Advertising  
claims

(2) All claims allowed by a judge shall within one week thereafter be advertised by the returning officer at the expense of the candidate in the same newspapers in which the statement of the other election expenses was published. R.S.O. 1970, c. 142, s. 144; 1971, c. 100, s. 10, *part*.

.....

## STATUTES AND REGULATIONS

### Introduction

Finally this chapter on the legislative power of Ontario will comment on statutory sources dealing with the elaboration, publication, and interpretation of statutes and regulations.

### Statutes

A statute of Ontario has to be passed by the Legislative Assembly and assented to by the Lieutenant Governor to become law. The Legislative Assembly has to examine every bill following an orderly procedure comprising three readings. At the time of the second reading bills are often considered by committees of the Assembly. Once assented to, the statutes of Ontario have to be printed, published and distributed by the provincial Queen's Printer in such a manner as prescribed by the Lieutenant Governor in Council, and approved by resolution of the Assembly, as provided for by the Statutes Act (R.S.O. 1980, c. 483). According to sections 6 and 7 of this statute, and section 25 of the Evidence Act (R.S.O. 1980, c. 145), only copies of statutes certified by the Clerk of the Legislative Assembly, and printed by the provincial Queen's Printer are admitted in evidence of their contents. As to revised statutes, the provisions concerning their elaboration, publication and coming into force are specified in the Statutes Revision Act, 1979 (S.O. 1979, c. 109; R.S.O. 1980, vol. 9, pp. 623-625).

The statutes of Ontario have to be construed following rules contained in the Interpretation Act, reproduced below. Furthermore, section 25(2) of the Evidence Act provides for the admission in evidence of copies of statutes translated into the French language, but in the event of a conflict between the French language translation and the version published under the Statutes Act, the latter version shall prevail.

## Regulations

According to the Regulation Act (R.S.O. 1980, c. 446), every regulation of Ontario shall be filed in duplicate with the Registrar of Regulations. Except where otherwise provided, a provincial regulation that is not filed has no effect. Unless otherwise stated in it, a regulation comes into force the day it is filed, and has to be published in the Ontario Gazette within one month of its filing. A regulation that is not published is not effective against a person who has not had actual notice of it. The publication of a regulation is prima facie proof of its existence and contents, and judicial notice shall be taken of it. Every regulation has to be referred to the Standing Committee on Regulations, which reports from time to time to the Legislative Assembly. Furthermore, the publication of a consolidation or codification of regulations made under the authority of the Regulations Act, shall be deemed published within the meaning of this statute. In addition, the Regulations Revision Act, 1968-69 (S.O. 1968-69, c. 111), and the Revised Regulations Confirmation Act, 1972 (S.O. 1972, c. 84), deal with the elaboration, publication and coming into force of the revision and consolidation of the regulations of 1970, while the Regulations Revisions Act, 1979 (S.O. 1979, c. 110), establishes the procedure for the consolidation and revision of the regulations of 1980. Finally, it should be pointed out that the rules of construction set forth in sections 2, 4, 9, 27, and 30 of the Interpretation Act already mentioned, apply to regulations as well.

In addition to statutes concerned with the revision of statutes and consolidation of regulations mentioned above, legislative sources dealing with the elaboration, publication, and interpretation of statutes and regulations of Ontario are as follows:

1. Constitution Act, 1867 (formerly B.N.A. Act, 1867).  
Note: The provisions of its sections 53 to 57 apply mutatis mutandis to Ontario, as specified in section 90. This statute does not, however, contain any provision concerning the interpretation of statutes or regulations.



2. Interpretation Act, R.S.O. 1980, c. 219, as amended.  
Note: This statute, reproduced below, deals with the interpretation of statutes as well as regulations of the province.
3. Statutes Act, R.S.O. 1980, c. 483.  
Note: This statute, not reproduced here, specifically provides that the Clerk of the Legislative Assembly shall furnish a certified copy of every act of the Legislature of Ontario to the provincial Queen's Printer, who is responsible for their printing and distribution. According to section 5, unless otherwise provided for, every act of Ontario comes into force and takes effect on the sixtieth day after the prorogation or dissolution of the session of the Legislature, or the signification.
4. Regulations Act, R.S.O. 1980, c. 446.  
Note: This statute, not reproduced here, entrusts the Registrar of Regulations with the custody of regulations, and specifies conditions regarding their validity, coming into force, and publication. The final decision to determine whether a regulation or order is a regulation within the meaning of this act belongs to a designated Minister of the Executive Council. Moreover, the Standing Committee on Regulations has to examine every provincial regulation, and report to the Legislative Assembly.
5. Official Notices Publication Act, R.S.O. 1980, c. 323.  
Note: This statute, not reproduced here, provides that regulations, orders, proclamations and other official notices of the government of Ontario shall be published in the Ontario Gazette.
6. Evidence Act, R.S.O. 1980, c. 145.  
Note: Sections 25, and 26 of this statute deal with the documentary evidence of imperial, federal, and provincial statutes, proclamations, ordinances and regulations.





## LOIS ET RÈGLEMENTS

### Introduction

Ce chapitre sur le pouvoir législatif en Ontario se complète par une étude sur l'élaboration, la publication et l'interprétation des lois et règlements.

### Les lois

Aucune loi ontarienne ne peut avoir d'existence juridique sans avoir été adoptée au préalable par l'Assemblée législative et sanctionnée par le lieutenant-gouverneur. L'Assemblée législative doit examiner tout projet de loi en suivant une procédure établie qui comporte trois lectures. Lors de la seconde lecture, les projets de loi sont souvent soumis à la considération de comités parlementaires. Une fois sanctionnées, les lois ontariennes doivent, tel que le stipule le Statutes Act (R.S.O. 1980, c. 483), être imprimées, publiées et distribuées par l'éditeur de la province en la manière prescrite par le lieutenant-gouverneur en conseil et approuvées par résolution de l'Assemblée législative. En vertu des art. 6 et 7 de cette loi et de l'art. 25 du Evidence Act (R.S.O. 1980, c. 145), seuls les exemplaires des lois visés par le greffier de l'Assemblée législative et publiés par l'éditeur de la province sont admissibles en preuve et font foi de leur contenu. Le cas particulier des lois refondues est couvert par le Statutes Revision Act, 1979 (S.O. 1979, c. 109 ou R.S.O. 1980, vol. 9, pp. 623-625) en ce qui a trait à leur élaboration, à leur publication et à leur entrée en vigueur.

Les lois ontariennes doivent être interprétées suivant les règles contenues dans l'Interpretation Act reproduit ci-après. Toutefois, d'après l'art. 25(2) de l'Evidence Act qui reconnaît l'admissibilité en preuve de la traduction française d'une loi ontarienne, s'il y a incompatibilité entre cette traduction et la version publiées sous l'autorité du Statutes Act précité, c'est cette dernière version qui doit avoir préséance.

### Les règlements

En vertu du Regulations Act (R.S.O. 1980, c. 446), tout règlement ontarien doit être déposé en double auprès du registraire des règlements. Sauf indication au contraire, un règlement provincial ne peut avoir d'effet sans ce dépôt. A moins

qu'une autre date n'ait été fixée, il prend effet le jour de son dépôt et doit être publié dans l'Ontario Gazette dans le mois qui suit le jour de son dépôt. Un règlement non publié ne peut valoir à l'encontre d'une personne qui n'en a pas une connaissance actuelle. La publication d'un texte réglementaire constitue une preuve prima facie de son existence et de son contenu; connaissance judiciaire doit être prise de tout règlement publié. Tout règlement doit être soumis au comité permanent sur les règlements qui fait rapport de temps à autre à l'Assemblée législative. Par ailleurs, toute codification des règlements faite sous l'autorité du Regulations Act est une publication au sens de cette loi. A cet égard, le Regulations Revision Act, 1968-69 (S.O. 1968-69, c. 111) et le Revised Regulations Confirmation Act, 1972 (S.O. 1972, c. 84) couvrent l'élaboration, la publication et l'entrée en vigueur de la codification des règlements de 1970, tandis que le Regulations Revisions Act, 1979 (S.O. 1979, c. 110) établit le processus de mise en oeuvre de la codification de 1980. Enfin, il y a lieu de souligner que les règles d'interprétation énoncées aux art. 2, 4, 9, 27 et 30 du Interpretation Act déjà mentionné, s'appliquent aux règlements.

Outre les textes relatifs à la refonte des lois et à la codification des règlements dont il a été question précédemment, les sources législatives portant sur l'élaboration, la publication et l'interprétation des lois et règlements ontariens sont les suivantes et peuvent se résumer comme suit:

1. Loi constitutionnelle de 1867 (autrefois l'A.A.N.B., 1867)  
Note: Par application de l'art. 90 de cette loi impériale ses art. 53 à 57 s'appliquent mutatis mutandis à l'Ontario. Cette loi ne renferme cependant aucune disposition sur l'interprétation des lois ou sur le pouvoir réglementaire.
2. Interpretation Act, R.S.O. 1980, c. 219 et ses modifications  
Note: Cette loi, reproduite ci-après, traite de l'interprétation des lois et règlements de la province.
3. Statutes Act, R.S.O. 1980, c. 483  
Note: Cette loi, non reproduite ici, stipule notamment que le greffier de l'Assemblée législative doit fournir un exemplaire visé de toute loi ontarienne à l'éditeur de la province qui est responsable de leur impression et de leur distribution. En vertu de l'art. 5, hormis qu'une autre date ne soit fixée

pour sa mise en vigueur, une loi ontarienne devient exécutoire le soixantième jour qui suit celui de la prorogation ou dissolution de la session ou celui de sa signification.

4. Regulations Act, R.S.O. 1980, c. 446

Note: Cette loi, non reproduite ici, confie au registraire des règlements la garde des textes réglementaires et détermine les conditions relatives à leur validité, à leur entrée en vigueur et à leur publication. Il appartient au ministre désigné par le Conseil exécutif de décider en dernier ressort si une ordonnance ou un arrêté en conseil est un règlement au sens de la présente loi. Par ailleurs, le comité permanent sur les règlements doit vérifier chaque règlement provincial et faire rapport à l'Assemblée législative.

5. Official Notices Publication Act, R.S.O. 1980, c. 323

Note: Cette loi, non reproduite ici, établit que les règlements, ordonnances, proclamations et autres avis officiels du gouvernement ontarien doivent être publiés dans l'Ontario Gazette.

6. Evidence Act, R.S.O. 1980, c. 145

Note: Les art. 25 et 26 de cette loi traitent de la preuve documentaire des lois, proclamations, ordonnances et règlements impériaux, fédéraux et provinciaux.



## Interpretation Act

R.S.O. 1980, c. 219

with amendments to date, including 1984, c. 11

Application  
of Act

1.—(1) The provisions of this Act apply to every Act of the Legislature contained in these Revised Statutes or hereafter passed, except in so far as any such provision,

(a) is inconsistent with the intent or object of the Act; or

(b) would give to a word, expression or provision of the Act an interpretation inconsistent with the context; or

(c) is in the Act declared not applicable thereto.

Application  
of certain  
sections to  
regulations

(2) Sections 2, 4, 9, 27 and 30 apply to the regulations made under the authority of an Act. R.S.O. 1970, c. 225, s. 1.

Interpre-  
tation  
provisions in  
other Acts

2. Where an Act contains an interpretation provision, it shall be read and construed as subject to the exceptions contained in subsection 1 (1). R.S.O. 1970, c. 225, s. 2.

Application  
to this Act

3. The provisions of this Act apply to the construction of it and to the words and expressions used in it. R.S.O. 1970, c. 225, s. 3.

### RULES OF CONSTRUCTION

Law always  
speaking

4. The law shall be considered as always speaking and, where a matter or thing is expressed in the present tense, it is to be applied to the circumstances as they arise, so that effect may be given to each Act and every part of it according to its true intent and meaning. R.S.O. 1970, c. 225, s. 4.

What may  
be done  
under an  
Act before  
it is in  
operation

5. Where an Act is not to come into operation immediately on the passing thereof and confers power to make an appointment, to make, grant or issue an order, warrant, scheme, letters patent, rules, regulations or by-laws, to give notices, to prescribe forms, or to do any thing for the purposes of the Act, that power may be exercised at any time after the passing of the Act, but an instrument made under the power, unless the contrary is necessary for bringing the Act into operation, does not come into operation until the Act comes into operation. R.S.O. 1970, c. 225, s. 5.

## Loi d'interprétation

L.R.O. 1980, c. 219

et ses modifications à jour, y inclus 1984, c. 11

**1** (1) Les dispositions de la présente loi s'appliquent à toutes les lois comprises dans la présente refonte ou adoptées par la suite, sauf dans la mesure où :

Champ d'application

a) elles sont incompatibles avec le sens ou l'objet de ces lois;

b) elles donneraient à quelque terme, expression ou disposition une interprétation incompatible avec le contexte;

c) ces lois les excluent.

(2) Les articles 2, 4, 9, 27 et 30 s'appliquent aux règlements d'application d'une loi. L.R.O. 1980, chap. 219, art. 1.

Application de certains articles aux règlements

**2** Les définitions des autres lois sont subordonnées aux exceptions prévues au paragraphe 1 (1). L.R.O. 1980, chap. 219, art. 2.

Définitions des autres lois

**3** Les dispositions de la présente loi s'appliquent à son interprétation et à celle des termes et expressions qui y figurent. L.R.O. 1980, chap. 219, art. 3.

Application à la présente loi

## RÈGLES D'INTERPRÉTATION

**4** La loi s'applique à tout temps. La disposition exprimée au temps présent s'applique aux circonstances au fur et à mesure qu'elles surgissent de façon à donner effet à l'ensemble et à chacun des éléments de la loi selon son objet et son sens véritables. L.R.O. 1980, chap. 219, art. 4.

La loi s'applique à tout temps

**5** Si la loi qui confère, pour son application, les pouvoirs notamment de faire des nominations, de donner des directives, d'accorder des autorisations, de rédiger des projets, de délivrer des lettres patentes, de prendre des règlements, de signifier des avis, de prévoir des formulaires, n'entre pas en vigueur le jour même de son adoption, le pouvoir peut s'exercer immédiatement, mais l'effet de cet exercice est différé jusqu'à l'entrée en vigueur de la loi, à moins que l'exercice ne soit une condition préalable à cette entrée en vigueur. L.R.O. 1980, chap. 219, art. 5.

Avant l'entrée en vigueur d'une loi

## INTERPRETATION

Meaning of  
expressions  
used in  
instruments  
issued under  
an Act

6. Where an Act confers power to make, grant or issue an order, warrant, scheme, letters patent, rule, regulation or by-law, expressions used therein, unless the contrary intention appears, have the same meaning as in the Act conferring the power. R.S.O. 1970, c. 225, s. 6.

Judicial  
notice

7.—(1) Every Act shall be judicially noticed by judges, justices of the peace and others without being specially pleaded.

Idem

(2) Every proclamation shall be judicially noticed by judges, justices of the peace and others without being specially pleaded. R.S.O. 1970, c. 225, s. 7.

Effect of  
preamble

8. The preamble of an Act shall be deemed a part thereof and is intended to assist in explaining the purport and object of the Act. R.S.O. 1970, c. 225, s. 8.

Marginal  
notes,  
headings,  
etc., not  
part of Act

9. The marginal notes and headings in the body of an Act and references to former enactments form no part of the Act but shall be deemed to be inserted for convenience of reference only. R.S.O. 1970, c. 225, s. 9.

All Acts  
remedial

10. Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of any thing that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit. R.S.O. 1970, c. 225, s. 10.

The Crown

11. No Act affects the rights of Her Majesty, Her heirs or successors, unless it is expressly stated therein that Her Majesty is bound thereby. R.S.O. 1970, c. 225, s. 11.

Private Acts

12. No Act of the nature of a private Act affects the rights of any person, or body corporate, politic or collegiate, such only excepted as are therein mentioned or referred to. R.S.O. 1970, c. 225, s. 12.

## REPEAL, AMENDMENT AND CONSOLIDATION

Reservation  
of power  
to repeal  
or amend

13. Every Act shall be construed as reserving to the Legislature the power of repealing or amending it, and of revoking, restricting, or modifying any power, privilege or advantage thereby vested in or granted to any person or party, whenever the repeal, amendment, revocation, restriction or modification is considered by the Legislature to be required for the public good. R.S.O. 1970, c. 225, s. 13.



## INTERPRÉTATION

**6** Quand une loi confère le pouvoir de donner des directives, d'accorder des autorisations, de délivrer des lettres patentes, de rédiger des projets ou de prendre des règlements, les expressions qui y figurent ont le même sens que celui de la loi qui confère ce pouvoir, sauf indication d'intention contraire. L.R.O. 1980, chap. 219, art. 6.

Interprétation des  
actes autorisés par  
la loi

**7** (1) Les lois sont connues d'office, notamment par les juges et les juges de paix. Il n'est pas nécessaire de les invoquer spécifiquement.

La loi est connue  
d'office

(2) Il en est de même des proclamations. L.R.O. 1980, chap. 219, art. 7.

Idem

**8** Le préambule fait partie de la loi et sert à en expliquer la portée et l'objet. L.R.O. 1980, chap. 219, art. 8.

Le préambule fait  
partie de la loi

**9** Les notes marginales et les rubriques, ainsi que les renvois aux textes remplacés, ne font pas partie de la loi. Ils n'y sont que pour faciliter la consultation. L.R.O. 1980, chap. 219, art. 9.

Les notes margi-  
nales ne font pas  
partie de la loi

**10** La loi est réputée réparatrice, qu'elle ait pour objet immédiat d'imposer un comportement que le législateur estime être dans l'intérêt du public ou qu'elle empêche ce qui lui paraît contraire. Elle doit faire l'objet d'une interprétation large, juste et libérale, afin d'assurer la réalisation de son objet selon son sens, son intention et son esprit véritables. L.R.O. 1980, chap. 219, art. 10.

Les lois sont répa-  
ratrices

**11** La loi ne porte pas atteinte aux droits de Sa Majesté, de ses héritiers ni de ses successeurs, à moins de précision explicite que Sa Majesté est liée. L.R.O. 1980, chap. 219, art. 11.

La Couronne

**12** La loi de la nature d'une loi d'intérêt privé ne porte pas atteinte aux droits des personnes physiques ni morales, ni des corps constitués qui n'y sont pas mentionnés expressément. L.R.O. 1980, chap. 219, art. 12.

Loi privée

## ABROGATION, MODIFICATION ET REFONTE

**13** La loi est réputée subordonnée au pouvoir du législateur de l'abroger ou de la modifier, ainsi que de révoquer, limiter ou modifier un pouvoir, un privilège ou un avantage qu'elle attribue ou confère, dès que l'intérêt du public paraît l'exiger. L.R.O. 1980, chap. 219, art. 13.

Pouvoir d'abroger  
ou de modifier

**14** (1) Sous réserve des dispositions contraires de la présente loi, l'abrogation d'une loi ou d'un règlement :

Effet de l'abroga-  
tion



## INTERPRETATION

Repeal.  
effect

14.—(1) Where an Act is repealed or where a regulation is revoked, the repeal or revocation does not, except as in this Act otherwise provided.

- (a) revive any Act, regulation or thing not in force or existing at the time at which the repeal or revocation takes effect;
- (b) affect the previous operation of any Act, regulation or thing so repealed or revoked;
- (c) affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, regulation or thing so repealed or revoked;
- (d) affect any offence committed against any Act, regulation or thing so repealed or revoked, or any penalty or forfeiture or punishment incurred in respect thereof;
- (e) affect any investigation, legal proceeding or remedy in respect of any such privilege, obligation, liability, penalty, forfeiture or punishment.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Act, regulation or thing had not been so repealed or revoked.

When other  
provisions  
substituted

(2) If other provisions are substituted for those so repealed or revoked,

- (a) all officers and persons acting under the Act, regulation or thing so repealed or revoked, shall continue to act as if appointed under the provisions so substituted until others are appointed in their stead;
- (b) all proceedings taken under the Act, regulation or thing so repealed or revoked, shall be taken up and continued under and in conformity with the provisions so substituted, so far as consistently may be;
- (c) in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights existing or accruing under the Act, regulation or thing so repealed or revoked, or in any other proceeding in relation to matters that have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed so far as it can be adopted; and

## INTERPRÉTATION

- a) ne fait pas revivre une loi, un règlement ni une situation juridique qui n'est plus en vigueur et qui n'existe plus au moment où l'abrogation prend effet;
- b) ne porte pas atteinte à l'application antérieure d'un texte qu'elle abroge ni d'une situation à laquelle elle met fin;
- c) ne porte pas atteinte aux droits ni aux privilèges acquis, ni aux obligations échues ou à échoir, ni aux responsabilités encourues en vertu de ce texte ou de cette situation;
- d) est sans effet sur les infractions à ce texte ou les atteintes à cette situation et sur les pénalités, confiscations et peines encourues en conséquence;
- e) est sans effet sur les enquêtes, instances judiciaires ou sanctions se rapportant à ces privilèges, obligations, responsabilités, pénalités, confiscations et peines.

Ces enquêtes, instances et sanctions peuvent être commencées, continuées ou mises à exécution et les pénalités, confiscations et peines peuvent être imposées, comme si le texte n'avait pas été abrogé ni la situation pris fin.

(2) Si d'autres dispositions remplacent celles qui sont abrogées :

Substitution de  
dispositions

- a) les agents ou autres personnes agissant en vertu de l'ancien texte ou de l'ancienne situation continuent d'agir comme s'ils étaient nommés en application des nouvelles dispositions jusqu'à la nomination de leurs successeurs;
- b) les instances engagées en vertu de l'ancien texte ou de l'ancienne situation sont reprises et continuées en vertu des nouvelles dispositions et en conformité avec celles-ci dans la mesure où ces dernières le permettent;
- c) la procédure établie par les nouvelles dispositions est suivie dans la mesure où elle peut y être adaptée pour le recouvrement des pénalités et l'exécution des confiscations encourues, et pour faire valoir les droits échus ou à échoir en vertu du texte abrogé ou de la situation qui a pris fin. Il en est de même des instances relatives à des faits survenus avant l'abrogation;
- d) si une pénalité, confiscation ou peine est réduite ou atténuée par les nouvelles dispositions, le juge prononce, après la révocation, la nouvelle sanction. L.R.O. 1980, chap. 219, art. 14.

## INTERPRETATION

- (d) if any penalty, forfeiture or punishment is reduced or mitigated by any of the provisions of the Act, regulation or thing whereby such other provisions are substituted, the penalty, forfeiture or punishment, if imposed or adjudged after such repeal or revocation, shall be reduced or mitigated accordingly. R.S.O. 1970, c. 225, s. 14.

Re-enactment,  
amendment,  
consolidation  
and revision

**15.** Where an Act is repealed and other provisions are substituted by way of re-enactment, amendment, revision or consolidation,

- (a) all regulations, orders, rules and by-laws made under the repealed Act continue good and valid in so far as they are not inconsistent with the substituted Act until they are annulled and others made in their stead; and
- (b) a reference in an unrepealed Act, or in a rule, order or regulation made thereunder to such repealed Act, shall, as regards any subsequent transaction, matter or thing be held and construed to be a reference to the provisions of the substituted Act relating to the same subject-matter and, if there is no provision in the substituted Act relating to the same subject-matter, the repealed Act stands good and shall be read and construed as unrepealed in so far, and in so far only, as is necessary to support, maintain or give effect to such unrepealed Act, or such rule, order or regulation made thereunder. R.S.O. 1970, c. 225, s. 15.

Repeal of  
Act not a  
declaration  
that Act was  
in force

**16.** The repeal of an Act shall be deemed not to be or to involve a declaration that the Act was or was considered by the Legislature to have been previously in force. R.S.O. 1970, c. 225, s. 16.

Repeal or  
amendment  
not a  
declaration  
of previous  
law

**17.** The repeal or amendment of an Act shall be deemed not to be or to involve any declaration as to the previous state of the law. R.S.O. 1970, c. 225, s. 17.

Amendment  
of Act not a  
declaration  
of different  
state of law

**18.** The amendment of an Act shall be deemed not to be or to involve a declaration that the law under the Act was or was considered by the Legislature to have been different from the law as it has become under the Act as so amended. R.S.O. 1970, c. 225, s. 18.

Re-enactment, etc.,  
not an  
adoption of  
judicial  
construction

**19.** The Legislature shall not, by re-enacting, revising, consolidating or amending an Act, be deemed to have adopted the construction that has by judicial decision or otherwise been placed upon the language used in the Act or upon similar language. R.S.O. 1970, c. 225, s. 19.



## INTERPRÉTATION

**15** Si une loi est refondue ou abrogée et que ses dispositions sont en même temps adoptées de nouveau même avec modifications :

Adoption de nouveau ou refonte

- a) les règlements et décrets pris et les règles adoptées en vertu de la loi abrogée demeurent en vigueur dans la mesure où ils ne sont pas incompatibles avec la nouvelle forme de la loi jusqu'à ce qu'ils soient remplacés;
- b) le renvoi à la loi abrogée contenu dans une loi toujours en vigueur ou dans une règle adoptée ou un règlement ou décret pris en vertu de celle-ci est converti, dans son application à une affaire ou situation postérieure, en renvoi aux dispositions de la nouvelle loi dans la même matière. Si la nouvelle forme de la loi ne contient pas de disposition dans la matière, la loi abrogée demeure valable dans la mesure seulement où la validité est nécessaire pour donner effet aux dispositions du texte qui y renvoie. L.R.O. 1980, chap. 219, art. 15.

**16** L'abrogation d'une loi n'implique aucune reconnaissance de sa validité antérieure. L.R.O. 1980, chap. 219, art. 16.

L'abrogation de la loi n'implique pas sa validité antérieure

**17** L'abrogation et la modification d'une loi n'impliquent aucune prise de position au sujet du droit antérieur. L.R.O. 1980, chap. 219, art. 17.

L'abrogation et le droit antérieur

**18** La modification d'une loi n'implique aucune reconnaissance de la différence du droit antérieur. L.R.O. 1980, chap. 219, art. 18.

La modification d'une loi ne reconnaît pas la différence du droit antérieur

**19** L'adoption de nouveau des dispositions d'une loi qui est en même temps abrogée, ainsi que sa refonte ou sa modification, n'impliquent aucune adoption de l'interprétation qui a été donnée par la jurisprudence ou autrement aux expressions employées dans la loi abrogée ou à des expressions analogues. L.R.O. 1980, chap. 219, art. 19.

L'adoption de nouveau d'une loi ne comporte pas l'adoption de l'interprétation antérieure

## DEATH OF SOVEREIGN

**19a.** Where a reigning Sovereign dies, no rule or construction of law shall be applied so as to prevent the continuation of any matter under the successor to the Crown as if the death had not occurred. S.O. 1984, c. 11, s. 184(1).

Death of Sovereign

Note: La traduction française officielle de cet article n'était pas disponible au moment d'aller sous presse.



## INTERPRETATION

## DEATH OF SOVEREIGN

Death of  
Sovereign

**19a.** Where a reigning Sovereign dies, no rule or construction of law shall be applied so as to prevent the continuation of any matter under the successor to the Crown as if the death had not occurred. S.O. 1984, c. 11, s. 184(1).

## PROCLAMATIONS

Lieutenant  
Governor  
acting by  
proclama-  
tion

**20.** Where the Lieutenant Governor is authorized to do any act by proclamation, the proclamation is to be understood to be a proclamation issued under an order of the Lieutenant Governor in Council, but it is not necessary for the proclamation to mention that it is issued under such an order. R.S.O. 1970, c. 225, s. 20.

## CROWN APPOINTMENTS

Tenure  
of office

**21.** Authority to the Lieutenant Governor to make an appointment to an office, by commission or otherwise, shall be deemed authority to appoint during pleasure. R.S.O. 1970, c. 225, s. 21.

## REGULATIONS

Regulations

**22.** The Lieutenant Governor in Council may make regulations for the due enforcement and carrying into effect of any Act of the Legislature and, where there is no provision in the Act, may prescribe forms and may fix fees to be charged by all officers and persons by whom anything is required to be done. R.S.O. 1970, c. 225, s. 22.

## IMPRISONMENT

Imprison-  
ment,  
place

**23.** If in an Act a person is directed to be imprisoned or committed to prison, the imprisonment or committal shall, if no other place is mentioned or provided by law, be in or to the correctional institution of the locality in which the order for the imprisonment is made or, if there be no correctional institution there, then in or to the correctional institution that is nearest to such locality. R.S.O. 1970, c. 225, s. 23.

Hard  
labour

**24.** Where power to impose imprisonment is conferred by an Act, it shall be deemed to authorize the imposing of imprisonment with hard labour. R.S.O. 1970, c. 225, s. 24.

## OFFENCE UNDER MORE THAN ONE PROVISION

Offence  
under more  
than one  
provision

**25.** Where an act or omission constitutes an offence under two or more Acts, the offender, unless the contrary intention appears, is liable to be prosecuted and punished under either or any of those Acts, but is not liable to be punished twice for the same act or omission. R.S.O. 1970, c. 225, s. 25.

## INTERPRÉTATION

## PROCLAMATION

**20** L'autorisation donnée au lieutenant-gouverneur de procéder par proclamation implique une proclamation en vertu d'un décret du lieutenant-gouverneur en conseil. Il n'est toutefois pas nécessaire que le texte de la proclamation mentionne le décret. L.R.O. 1980, chap. 219, art. 20.

Proclamation du lieutenant-gouverneur

## NOMINATIONS FAITES PAR LA COURONNE

**21** Le pouvoir de nommer, donné au lieutenant-gouverneur, que ce soit par lettres patentes ou autrement, s'entend de nominations à titre amovible. L.R.O. 1980, chap. 219, art. 21.

Nominations à titre amovible

## RÈGLEMENTS

**22** Le lieutenant-gouverneur en conseil peut prendre des règlements pour faire observer et appliquer les lois. Le silence de la loi à ce sujet ne l'empêche pas de prévoir des formulaires et de fixer les droits exigibles par les agents ou par ceux à qui une fonction est confiée. L.R.O. 1980, chap. 219, art. 22.

Règlements

## EMPRISONNEMENT

**23** Quand une loi prévoit l'incarcération ou la détention en prison, celle-ci se fait à la maison de correction de la localité où l'ordre d'emprisonnement a été prononcé si la loi n'indique ni ne prévoit d'autre endroit. En l'absence de maison de correction dans cette localité, elle se fait à la maison la plus proche. L.R.O. 1980, chap. 219, art. 23.

Lieu d'emprisonnement

**24** Le pouvoir d'imposer un emprisonnement s'entend d'un emprisonnement avec travaux forcés. L.R.O. 1980, chap. 219, art. 24.

Travaux forcés

## INFRACTIONS À PLUS D'UNE DISPOSITION

**25** Quand deux lois ou plus qualifient d'infraction un acte ou une omission, le coupable est passible de poursuite et de condamnation en vertu de l'une ou de l'autre de ces lois, à moins que le sens de la loi ne s'y oppose. Toutefois il n'est pas passible de plus d'une peine pour le même acte ou la même omission. L.R.O. 1980, chap. 219, art. 25.

Infractions que prévoient plus d'une disposition

## PERSONNES MORALES

**26** À moins que le contexte ne s'y oppose, la constitution par la loi d'une association ou d'un groupe en personne morale ou en corps constitué :

Effets de la constitution en personne morale

INTERPRETATION

CORPORATIONS

Effect of  
words con-  
stituting a  
corporation

26. In every Act, unless the contrary intention appears, words making any association or number of persons a corporation or body politic and corporate,

- (a) vest in the corporation power to sue and be sued, to contract and be contracted with by its corporate name, to have a common seal, to alter or change the seal at its pleasure, to have perpetual succession, to acquire and hold personal property or movables for the purpose for which the corporation is constituted, and to alienate the same at pleasure;
- (b) vest in a majority of the members of the corporation the power to bind the others by their acts; and
- (c) exempt individual members of the corporation from personal liability for its debts, obligations or acts if they do not contravene the provisions of the Act incorporating them. R.S.O. 1970, c. 225, s. 26.

IMPLIED PROVISIONS

Implied  
provisions,  
  
as to juris-  
diction

27. In every Act, unless the contrary intention appears,

Implied  
powers

acts to be  
done by  
more than  
two

deviation  
from forms

powers and  
duties to be  
exercised  
and per-  
formed from  
time to time

to be exer-  
cised and  
performed  
by holder of  
office for  
time being

- (a) where anything is directed to be done by or before a provincial judge or a justice of the peace or other public functionary or officer, it shall be done by or before one whose jurisdiction or powers extend to the place where it is to be done;
- (b) where power is given to a person, officer or functionary to do or to enforce the doing of an act or thing, all such powers shall be understood to be also given as are necessary to enable the person, officer or functionary to do or enforce the doing of the act or thing;
- (c) where an act or thing is required to be done by more than two persons, a majority of them may do it;
- (d) where a form is prescribed, deviations therefrom not affecting the substance or calculated to mislead do not vitiate it;
- (e) where a power is conferred or a duty is imposed on the holder of an office as such, the power may be exercised and the duty shall be performed from time to time as occasion requires;
- (f) where a power is conferred or a duty is imposed on the holder of an office as such, the power may be exercised and the duty shall be performed by the holder of the office for the time being;



INTERPRÉTATION

- a) donne à la personne morale la capacité d’ester en justice et de conclure des contrats sous sa raison sociale, d’avoir un sceau commun, de le modifier ou de le remplacer à volonté, d’avoir succession perpétuelle, d’acquérir et de détenir des biens meubles servant à ses objets, et de s’en départir à volonté;
- b) donne à la majorité de ses membres le pouvoir d’engager les autres;
- c) exonère chaque membre qui n’enfreint pas la loi constitutive de responsabilité personnelle de ses dettes et obligations ou de ses actes. L.R.O. 1980, chap. 219, art. 26.

DISPOSITIONS IMPLICITES

27 Dans toute loi, à moins que le contexte ne s’y oppose :	Dispositions implicites
a) la prescription qu’une chose soit faite par ou devant un juge de la Cour provinciale, un juge de paix ou un agent ou fonctionnaire implique celui qui est territorialement compétent à l’endroit où la chose doit se faire;	Compétence territoriale
b) le pouvoir de faire ou de faire faire une chose implique les pouvoirs accessoires nécessaires pour son accomplissement;	Pouvoirs accessoires
c) ce qui est exigé de plusieurs personnes peut être accompli par la majorité;	Pouvoir de la majorité
d) les variantes apportées aux formulaires prévus sans en changer le fond et sans l’intention de tromper, n’en entraînent pas la nullité;	Conformité aux formulaires
e) les attributions d’une fonction sont exercées suivant le besoin;	Exercice suivant le besoin
f) les attributions d’une fonction sont exercées par celui qui, au moment de l’exercice, en est titulaire;	Exercice par le titulaire
g) le pouvoir réglementaire implique celui de modifier, d’abroger et de substituer;	Pouvoir réglementaire
h) le délai qui expire un jour férié est prorogé au prochain jour ouvrable;	Délai, jour férié
i) le délai d’agir au greffe d’une cour ou au bureau d’enregistrement ou du shérif qui expire un jour férié pour ce greffe ou ce bureau, est prorogé au prochain jour ouvrable;	Idem



## INTERPRETATION

power to  
make by-  
laws, etc., to  
confer power  
to alter

- (g) where power is conferred to make by-laws, regulations, rules or orders, it includes power to alter or revoke the same from time to time and make others;

computa-  
tion of time  
where time  
limited  
expires on  
a holiday

- (h) where the time limited by an Act for a proceeding or for the doing of any thing under its provisions expires or falls upon a holiday, the time so limited extends to and the thing may be done on the day next following that is not a holiday;

idem

- (i) where the time limited for a proceeding or for the doing of any thing in an office of the Supreme Court, or a county or district court office, or a surrogate court office, or a small claims court office, or a land registry office, or a sheriff's office expires or falls upon a day that is prescribed as a holiday for such office, the time so limited extends to and the thing may be done on the day next following that is not a holiday;

number  
and gender

- (j) words importing the singular number or the masculine gender only include more persons, parties or things of the same kind than one, and females as well as males and the converse;

idem

- (k) a word interpreted in the singular number has a corresponding meaning when used in the plural;

words  
authorizing  
appointment  
include  
power to  
remove

- (l) words authorizing the appointment of a public officer or functionary, or a deputy, include the power of removing him, reappointing him, or appointing another in his stead or to act in his stead, from time to time in the discretion of the authority in whom the power of appointment is vested;

directions to  
public officer  
to apply to  
his succes-  
sors and  
deputy

- (m) words directing or empowering a public officer or functionary to do an act or thing, or otherwise applying to him by his name of office, include his successors in office and his lawful deputy;

reference  
to sections  
by numbers

- (n) where reference is made by number to two or more sections, subsections, paragraphs, clauses or other provisions in an Act, the number first mentioned and the number last mentioned shall both be deemed to be included in the reference;

words  
authorizing  
appointment  
include  
power to  
appoint  
deputy

- (o) words authorizing the appointment of a public officer or functionary or the appointment of a person to administer an Act include the power of appointing a

## INTERPRÉTATION

- j) le singulier implique le pluriel, le masculin implique le féminin, et inversement; Singulier et masculin
- k) la définition d'un terme au singulier a un sens correspondant au pluriel; Idem
- l) le pouvoir de nommer à la fonction publique ou de nommer un adjoint implique les pouvoirs de destitution, de réintégration et de substitution, même temporaire, le tout à l'occasion et à discrétion; Nomination comprend destitution, etc.
- m) l'attribution des devoirs et des pouvoirs à un agent ou fonctionnaire, et les autres mentions qui se réfèrent à ses fonctions, s'appliquent en outre à ses successeurs et à ses adjoints dûment nommés; Attributions officielles
- n) le renvoi à une série d'articles, de paragraphes, d'alinéas, de sous-alinéas ou d'autres dispositions légales, comprend tant le premier que le dernier de la série de nombres; Série de chiffres
- o) l'autorisation de nommer un agent ou fonctionnaire ou de désigner une personne pour appliquer une loi comprend le pouvoir de nommer un adjoint pour exercer soit toutes les attributions de cette personne de la façon et dans les circonstances que précise l'acte de nomination, soit les attributions limitées que l'acte prévoit. L.R.O. 1980, chap. 219, art. 27. Nomination d'adjoint

## PROCÉDURE

- 28. Abrogé par L.O. 1984, c. 11, art. 184(2). Appel, modalités
- 29. Abrogé par L.O. 1984, c. 11, art. 184(2). Requête adressée à la cour ou au juge

## TERMES ET EXPRESSIONS

- 30 Les définitions qui suivent s'appliquent à toute loi, à moins que le contexte n'exige autrement. Termes et expressions

«agent de la paix» Maire, président de conseil de comté ou de municipalité régionale, shérif, shérif adjoint, agent du shérif, juge de paix, de même que le surveillant général, le gouverneur, un geôlier, gardien ou tout autre agent ou employé permanent d'une maison de correction, ainsi qu'un agent de police, un gardien, huissier et quiconque chargé du maintien de la paix publique ou de la signification et de l'exécution des actes de procédure en matière civile.

## INTERPRETATION

deputy to perform and have all the powers and authority of such public officer or functionary or person to be exercised in such manner and upon such occasions as are specified in the instrument appointing him or such limited powers and authority as the instrument prescribes. R.S.O. 1970, c. 225, s. 27.

## PROCEDURE

Appeals to  
Court of  
Appeal

28. Repealed S.O. 1984, c. 11, s. 184(2).

Application  
to court or  
Judge,  
procedure

29. Repealed S.O. 1984, c. 11, s. 184(2).

## WORDS AND TERMS

Words and  
terms

30. In every Act, unless the context otherwise requires;

1. "Act" includes enactment;
2. "affidavit", in the case of persons allowed by law to affirm or declare instead of swearing, includes affirmation and declaration;
3. "Assembly" means the Legislative Assembly of Ontario;
4. "county" includes two or more counties united for purposes to which the Act relates;
5. "Court of Appeal" means the Court of Appeal for Ontario;
6. "Divisional Court" means the Divisional Court of the High Court of Justice for Ontario;
7. "Great Seal" means the Great Seal of Ontario;
8. "herein" used in a provision of an Act relates to the whole Act and not to that provision only;
9. "High Court" means the High Court of Justice for Ontario;



## INTERPRÉTATION

«an» ou «année» Année civile.

«Assemblée» Assemblée législative de l'Ontario.

«cautionnement», «cautions» Cautionnement et cautions adéquats : ces termes n'impliquent pas pluralité de cautions.

«ci-inclus» Renvoie à l'ensemble de la loi sans se limiter à la disposition qui renferme la mention.

«comité des règles» Le comité des règles créé sous l'autorité de la Loi sur les tribunaux judiciaires\*.

L.R.O. 1980,  
chap. 223

«comté» S'entend en outre de l'union de deux comtés ou plus pour les besoins de la loi qui en parle.

«Cour d'appel» La Cour d'appel de l'Ontario.

«Cour de division» La Cour de division de la Haute Cour de l'Ontario.

«Cour suprême» La Cour suprême de l'Ontario.

«déclaration reçue sous serment» S'entend en outre de l'affirmation solennelle que la loi autorise à quiconque de faire au lieu du serment.

«déficience mentale» L'état du déficient mental.

«déficient mental» et «personne affligée d'une déficience mentale» Celui dont le développement des facultés mentales s'est arrêté ou est incomplet par suite, soit de facteurs congénitaux, soit d'une maladie ou d'une lésion, et qui a besoin de soins, de surveillance et de direction pour sa propre protection ou pour son bien-être ou pour la protection d'autrui.

«doit» Exprime l'obligation d'agir.

«écrit» Mots représentés ou reproduits sous une forme visible et notamment imprimés, peints, gravés, lithographiés, photographiés : il en est de même des termes analogues.



## INTERPRETATION

10. "Her Majesty", "His Majesty", "the Queen", "the King" or "the Crown" means the Sovereign of the United Kingdom, Canada and Her other Realms and Territories, and Head of the Commonwealth;
11. "holiday" includes Sunday, New Year's Day, Good Friday, Easter Monday, Christmas Day, the birthday or the day fixed by proclamation of the Governor General for the celebration of the birthday of the reigning Sovereign, Victoria Day, Dominion Day, Labour Day, Remembrance Day, and any day appointed by proclamation of the Governor General or the Lieutenant Governor as a public holiday or for a general fast or thanksgiving, and when any holiday, except Remembrance Day, falls on a Sunday, the day next following is in lieu thereof a holiday;
12. "justice of the peace" includes two or more justices of the peace or provincial judges assembled or acting together;
13. "legally qualified medical practitioner", "duly qualified medical practitioner", or any words importing legal recognition of a person as a medical practitioner or member of the medical profession, means a person licensed under Part III of the *Health Disciplines Act*;
14. "Lieutenant Governor" means the Lieutenant Governor of Ontario, or the chief executive officer or administrator for the time being carrying on the government of Ontario by whatever title he is designated;
15. "Lieutenant Governor in Council" means the Lieutenant Governor of Ontario or the person administering the government of Ontario for the time being acting by and with the advice of the Executive Council of Ontario;
16. "may" shall be construed as permissive;
17. "mental defective" and "mentally defective person" means a person in whom there is a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, and who requires care, supervision and control for his own protection or welfare or for the protection of others;

## INTERPRÉTATION

«grand sceau» Le grand sceau de l'Ontario.

«greffier» S'entend en outre de son adjoint.

«Haute Cour» La Haute Cour de l'Ontario.

«incapable mental» et «personne frappée d'incapacité mentale» Selon le cas :

(i) celui dont le développement des facultés mentales s'est arrêté ou est incomplet par suite, soit de facteurs congénitaux, soit d'une maladie ou d'une lésion,

(ii) celui qui est atteint de désordre de l'esprit,

au point où il a besoin de soins, de surveillance et de direction pour sa propre protection ou pour celle de ses biens.

«incapacité mentale» L'état de l'incapable mental.

«jour férié» Le dimanche, le Jour de l'An, le Vendredi Saint, le lundi de Pâques, Noël, l'anniversaire du souverain régnant, ou le jour fixé par proclamation du gouverneur-général pour en tenir place, le Jour de Victoria, la fête du Canada, la fête du Travail, le Jour du Souvenir et les jours que le gouverneur-général ou le lieutenant-gouverneur désigne par proclamation comme étant fête légale ou jour de pénitence ou d'action de grâce pour tous: si un jour férié autre que le Jour du Souvenir est un dimanche, ce jour est remis au lendemain.

«journal» Dans le contexte d'une exigence de publication dans un journal s'entend d'une publication imprimée sur feuilles détachées, à grand tirage, qui sort à intervalles réguliers d'une semaine au plus, dont la plupart du contenu est d'actualités d'intérêt général, et qui est vendue au public et à des abonnés réguliers et inscrits de bonne foi.

«juge de paix» S'entend en outre de deux ou plusieurs juges de paix ou juges de la Cour provinciale siégeant ou agissant ensemble.

«lieutenant-gouverneur» Le lieutenant-gouverneur de l'Ontario, le chef de l'exécutif ou l'administrateur intérimaire de son gouvernement, quel que soit le titre sous lequel il est désigné.

## INTERPRETATION

18. "mental deficiency" means the condition of mind of a mental defective;
19. "mentally ill person" means a person, other than a mental defective, who is suffering from such a disorder of the mind that he requires care, supervision and control for his own protection or welfare, or for the protection of others;
20. "mental illness" means the condition of mind of a mentally ill person;
21. "mental incompetent" and "mentally incompetent person" means a person,
  - (i) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or
  - (ii) who is suffering from such a disorder of the mind,
 

that he requires care, supervision and control for his protection and the protection of his property;
22. "mental incompetency" means the condition of mind of a mentally incompetent person;
23. "month" means a calendar month;
24. "newspaper", in a provision requiring publication in a newspaper, means a printed publication in sheet form, intended for general circulation, published regularly at intervals of not longer than a week, consisting in great part of news of current events of general interest and sold to the public and to regular subscribers upon a *bona fide* subscription list;
25. "now", "next", "heretofore" and "hereafter" shall be construed as having reference to the date of the coming into force of the Act;
26. "oath", in the case of persons allowed by law to affirm or declare instead of swearing, includes affirmation and declaration;
27. "peace officer" includes a mayor, warden, reeve, sheriff, deputy sheriff, sheriff's officer, and justice of the peace, and also the superintendent, governor,



## INTERPRÉTATION

«lieutenant-gouverneur en conseil» Le lieutenant-gouverneur de l'Ontario ou l'administrateur intérimaire de son gouvernement agissant sur avis conforme du Conseil exécutif de l'Ontario.

«loi» S'entend en outre d'une mesure législative.

«maintenant», «prochain», «jusqu'ici», «dorénavant»  
Se rapportent à la date de l'entrée en vigueur de la loi.

«malade mental» Celui qui, sans être un déficient mental, est atteint d'un désordre de l'esprit au point où il a besoin de soins, de surveillance et de direction pour sa propre protection ou pour son bien-être ou pour la protection d'autrui.

«maladie mentale» L'état du malade mental.

«médecin habilité à l'exercice de la profession médicale, médecin dûment habilité» ou autre expression indiquant qu'une personne est reconnue conformément à la loi comme médecin ou comme membre de la profession médicale. Personne habilitée conformément à la troisième partie de la *Loi sur les professions médicales et paramédicales*\*.

L.R.O. 1980,  
chap. 196

«mois» Mois civil.

«personne» S'entend en outre d'une personne morale ainsi que des héritiers exécuteurs testamentaires, administrateurs de la succession ou autres ayants droit d'une personne à qui peut s'appliquer le contexte conformément à la loi.

«peut» Exprime une faculté d'agir.

«prêter serment» S'entend en outre d'affirmer solennellement, dans le cas de celui que la loi autorise à ce faire au lieu de prêter serment, et «sous serment» a un sens correspondant.

«proclamation» Proclamation revêtue du grand sceau.

«règles de pratique» d'une cour. Les règles de pratique et de procédure prises dans l'exercice du pouvoir réglementaire applicable à cette cour ainsi qu'en application d'une loi qui prévoit que des procédures soient régies par des règles de pratique.



## INTERPRETATION

jailer, keeper, guard or any other officer or permanent employee of a correctional institution, and also a police officer, police constable, bailiff, constable or other person employed for the preservation and maintenance of the public peace or for the service or execution of civil process;

28. "person" includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
29. "proclamation" means a proclamation under the Great Seal;
30. "registrar" includes a deputy registrar;
31. "Rules Committee" means the Rules Committee established under the *Courts of Justice Act, 1984*;
32. "rules of court", when used in relation to a court, means rules made by the authority having power to make rules or orders regulating the practice and procedure of such court, or for the purpose of an Act directing or authorizing anything to be done by rules of court;
33. "security" means sufficient security, and "sureties" means sufficient sureties, and where these words are used, one person is sufficient therefor unless otherwise expressly required;
34. "shall" shall be construed as imperative;
35. "Supreme Court" means the Supreme Court of Ontario;
36. "swear", in the case of persons for the time being allowed by law to affirm or declare instead of swearing, includes affirm and declare, and "sworn" has a corresponding meaning;
37. "writing", "written", or any term of like import, includes words printed, painted, engraved, lithographed, photographed, or represented or reproduced by any other mode in a visible form;
38. "year" means a calendar year. R.S.O. 1970, c. 225, s. 30; 1984, c. 11, s. 184(3).

## INTERPRÉTATION

«Sa Majesté», «la Reine», «le Roi» ou «la Couronne» Le souverain du Royaume-Uni, du Canada et de ses autres royaumes et territoires et chef du Commonwealth.

«serment» S'entend en outre de l'affirmation solennelle de celui que la loi autorise à faire au lieu de prêter serment. L.R.O. 1980, chap. 219, art. 30; 1984, c.11 art. 184(3).

## DISPOSITIONS INTERPRÉTATIVES PARTICULIÈRES

31. Les définitions énoncées à l'article 1 de la Loi sur les tribunaux judiciaires\* s'appliquent à toutes les lois en matière juridique. L.R.O. 1980, chap.219, art. 31; 1984 c.11, art. 184(4). L.R.O. 1980,  
chap. 223

32 Les définitions énoncées à l'article 1 de la *Loi sur les municipalités*\* s'appliquent à toutes les lois en matière municipale. L.R.O. 1980, chap. 219, art. 32. L.R.O. 1980,  
chap. 302

## INTERPRETATION

### SPECIAL INTERPRETATION CLAUSES

31. The interpretation section of the Courts of Justice Act, 1984 extends to all Acts relating to legal matters. R.S.O. 1970, c. 225, s. 31; 1984, c. 11, s. 184(4).

R.S.O. 1980,  
c. 223

32. The interpretation section of the *Municipal Act* extends to all Acts relating to municipal matters. R.S.O. 1970, c. 225, s. 32.

R.S.O. 1980,  
c. 302

## INTERPRÉTATION

## CONCORDANCE DES DÉFINITIONS ET DES TITRES

Afin de faciliter les recherches, les définitions françaises correspondent aux définitions de la version anglaise, comme suit :

agent de la paix	peace officer
an <i>ou</i> année	year
Assemblée	Assembly
cautionnement, cautions	security, sureties
ci-inclus	herein
civil (an ou mois)	calendar (year or month)
comité des règles	Rules Committee
comté	county
Cour d'appel	Court of Appeal
Cour de division	Divisional Court
Cour suprême	Supreme Court
déclaration reçue sous serment	affidavit
déficience mentale	mental deficiency
déficient mental, personne affligée d'une déficience mentale	mental defective, mentally defective person
doit	shall
écrit	writing <i>or</i> written
grand sceau	Great Seal
greffier	registrar
Haute Cour	High Court
incapable mental, personne frappée d'incapacité mentale	mental incompetent, mentally incompetent person
incapacité mentale	mental incompetency
jour férié	holiday
journal	newspaper
juge de paix	justice of the peace
lieutenant-gouverneur	Lieutenant Governor
lieutenant-gouverneur en conseil	Lieutenant Governor in Council
loi	Act
maintenant, prochain, jusqu'ici, dorénavant	now, next, heretofore, hereafter
malade mental	mentally ill person
maladie mentale	mental illness
médecin habilité à l'exercice de la profession médicale	legally qualified medical practitioner
médecin dûment habilité	duly qualified medical practitioner
peut	may
prêter serment, sous serment	swear, sworn
proclamation	proclamation
règles de pratique	rules of court
serment	oath



# INTERPRÉTATION

Afin de faciliter les recherches, les titres anglais des lois mentionnées dans le texte sont les suivants :

*Loi sur les municipalités	Municipal Act
*Loi sur l'organisation judiciaire	Judicature Act
*Loi sur les professions médicales et paramédicales	Health Disciplines Act

\*Le titre français des lois mentionnées dans le texte et non encore traduites n'est donné qu'à titre indicatif.

JUDICIAL POWER



POUVOIR JUDICIAIRE



## JUDICIAL POWER

### Introduction

According to sections 92(14), and 101 of the Constitution Act, 1867 (formerly B.N.A. Act, 1867), the judicial power in Ontario is made up of federal as well as provincial courts, with the latter subdivided into courts whose judges are appointed by the federal government, and those whose judges are appointed by the province. These federal as well as provincial courts are as follows:

#### A. Federal courts:

1. Supreme Court of Canada
2. Federal Court of Canada

Note: Statutes creating these two courts are reproduced in part in volume 2 of this collection, pp. G11, and subs.

#### B. Provincial courts:

##### a) Whose judges are appointed federally:

1. Supreme Court of Ontario:
  - a) Court of Appeal
  - b) High Court of Justice
    - i) Divisional Court
2. District Court
3. Unified Family Court

Note: This court is presided over by a judge of the District Court appointed by the federal government, and authorized by the Lieutenant Governor in Council to exercise the jurisdiction of a judge of the Provincial Court (Family Division).

##### b) Whose judges are appointed provincially:

1. Surrogate Court
2. Provincial Court:
  - a) Criminal Division



- b) Provincial Offences Court
- c) Family Division
- d) Civil Division

The Courts of Justice Act, 1984, and the Surrogate Courts Act, are reproduced in part below. These two statutes deal especially with the jurisdiction of each of the provincial courts mentioned above, and the appointment of judges of these courts.

In addition to these statutes, the federal Judges Act, reproduced in part in volume 2 of this collection, pp. G47, and subs., should also be consulted, as it applies to provincial judges of Ontario who are nominated by the federal government. Finally, the following provincial statutes deal with the judicial power, but are not reproduced here:

1. Administration of Justice Act, R.S.O. 1980, c. 6.  
Note: This statute deals with the physical and financial aspects of the courts of Ontario, and provides the Lieutenant Governor in Council with power to make regulations concerning fees and allowances.
2. Justice of the Peace Act, R.S.O. 1980, c. 227, as amended.  
Note: This statute deals with the appointment of justices of the peace, defines their powers and duties, establishes the Justices of the Peace Review Council, and describes its functions.
3. Public Authorities Protection Act, R.S.O. 1980, c. 406.  
Note: This statute prevents actions against a justice of the peace, including a provincial judge, for any act done by him in the execution of his duty within his jurisdiction, unless the act was done maliciously and without reasonable and probable cause.

Finally, more information regarding the judicial power in general, the unitary and integrated character of the Canadian judicial structure, the principle of independence of the judiciary, and the role played by judges in Canada, can be found in volume 2 of this collection, pp. G5 to G7.

Selected references:

Ontario, Provincial Secretariat for Justice, The Justice System in Ontario, Toronto, 1982, 72 p. Published also in French.

Banks, Margaret A., "The Evolution of the Ontario Courts," in Flaherty, David H., ed., Essays in the History of Canadian Law, Toronto, University of Toronto Press, 1982, vol. 2, pp. 492-555.

The Canadian Encyclopedic Digest (Ontario), 3rd ed., Toronto, Carswell, 1974, vol. 6, title 38: "Courts".

Ontario Law Reform Commission, Report on Administration of Ontario Courts, Toronto, 1973, part 1, 401 p.

Gravelly, Patrick, "The Unified Family Court," (1978), 12 Law Society Gazette 90-101.



## POUVOIR JUDICIAIRE

### Introduction

En Ontario, conformément aux articles 92(14) et 101 de la Loi constitutionnelle de 1867 (autrefois l'A.A.N.B., 1867), le pouvoir judiciaire se compose à la fois de tribunaux fédéraux et de tribunaux provinciaux. Les tribunaux provinciaux se subdivisent à leur tour en tribunaux dont les juges sont nommés par l'état fédéral et en tribunaux dont les juges sont nommés par la province. Ces tribunaux, tant fédéraux que provinciaux, sont les suivants:

#### A. Tribunaux fédéraux:

1. Cour suprême du Canada
2. Cour fédérale du Canada

Note: Les lois constitutives de ces deux cours sont reproduites en partie aux pages G12 et suivantes du volume 2 de cette collection.

#### B. Tribunaux provinciaux:

- a) Tribunaux provinciaux dont les juges sont nommés par l'état fédéral:

1. Cour suprême de l'Ontario
  - . Cour d'appel de l'Ontario
  - . Haute Cour de **justice** de l'Ontario
  - .. Cour divisionnaire de l'Ontario

2. Cour de district de l'Ontario

3. Cour unifiée de la famille

Cette cour est présidée par un juge d'une cour de district nommé par l'état fédéral et autorisé par le lieutenant-gouverneur en conseil à exercer la compétence d'un juge de la division de la famille de la Cour provinciale.

- b) Tribunaux provinciaux dont les juges sont nommés par la province:

1. Cour des successions et des tutelles



## 2. Cour provinciale

- . Division criminelle
- . Cour des infractions provinciales
- . Division de la famille
- . Division civile

Des extraits du Courts of Justice Act, 1984 et du Surrogate Courts Act sont reproduits ci-après. Ces deux lois traitent notamment de la compétence matérielle de chaque tribunal provincial mentionné ci-haut et de la nomination des juges de ces cours.

Outre ces lois, il y a lieu de consulter la Loi sur les juges adoptée par le législateur fédéral et reproduite partiellement aux pages G48 et suivantes du volume 2 de cette collection; cette loi s'applique aux juges des cours ontariennes nommés par l'état fédéral. Par ailleurs, bien qu'elles aient trait au pouvoir judiciaire, les lois ontariennes suivantes ne sont pas reproduites:

1. Administration of Justice Act, R.S.O. 1980, c. 6  
 Cette loi porte sur les aspects matériels et financiers du fonctionnement des cours ontariennes et accorde au lieutenant-gouverneur en conseil le pouvoir d'établir le tarif des honoraires et dépens judiciaires.
2. Justice of the Peace Act, R.S.O. 1980, c. 227 et ses modifications  
 Cette loi établit le mode de nomination des juges de paix, définit leurs pouvoirs et devoirs, crée le conseil de révision des juges de paix et en décrit les fonctions.
3. Public Authorities Protection Act, R.S.O. 1980, c. 406  
 Cette loi empêche notamment toute poursuite judiciaire contre un juge de paix, y compris un juge provincial, qui a agi dans l'exercice de ses fonctions et dans les limites de sa compétence, sauf le cas où l'acte reproché a été commis de mauvaise foi et sans motif raisonnable et probable.

Enfin, de plus amples renseignements sur l'ensemble du pouvoir judiciaire, sur le caractère unitaire et intégré de la hiérarchie judiciaire et sur l'indépendance et le rôle des juges au Canada, sont contenus aux pages G8 et suivantes du volume 2 de cette collection.

Sources choisies

Ontario, Provincial Secretariat for Justice, The Justice System in Ontario, Toronto, 1982, 72 p.

Il existe également une version française de cette brochure.

Banks, Margaret A., "The Evolution of the Ontario Courts" dans David H. Flaherty (ed.), Essays in the History of Canadian Law vol. II, Toronto, University of Toronto Press, 1982, pp. 492-555

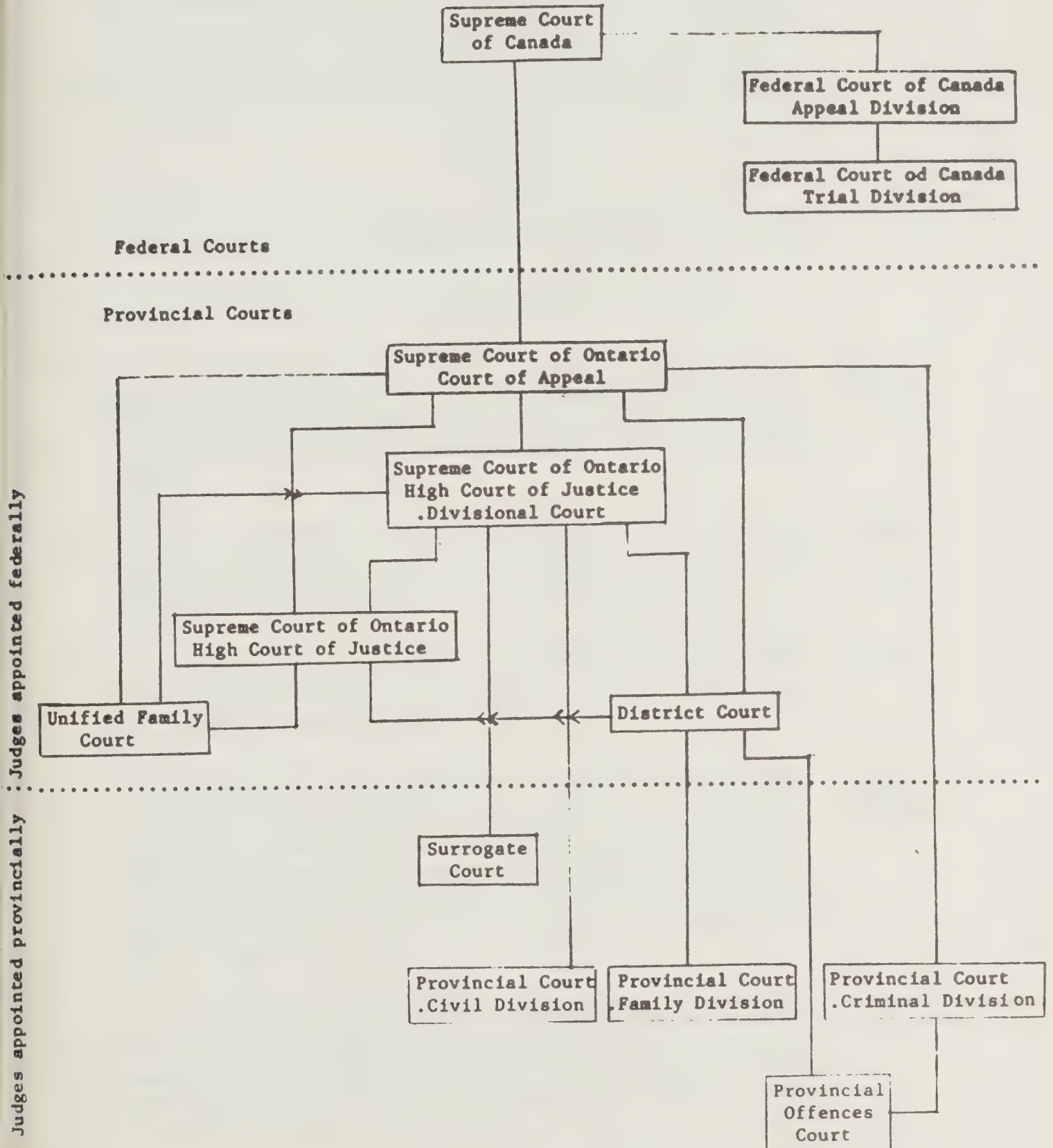
The Canadian Encyclopedic Digest (Ontario), 3rd edition, vol. 6, Title 38 "Courts", Toronto, Carswell, 1974

Ontario Law Reform Commission, Report on Administration of Ontario Courts, Part I, Toronto, 1973, 401 p.

Gravelly, Patrick, "The Unified Family Court", (1978) 12 Law Society Gazette, pp. 90-101.



# The Judicial System of Ontario







COURTS OF JUSTICE ACT, 1984

S.O. 1984, c. 11

with amendments to date, including 1984, c.19, s.11(2)

et ses modifications à jour, y inclus 1984, c.19, art.11(2)

.....

PART I

SUPREME COURT OF ONTARIO

ORGANIZATION

2.—(1) The Supreme Court of Ontario is continued as a superior court of record having civil and criminal jurisdiction, with all the jurisdiction, power and authority historically exercised by courts of common law and equity in England and Ontario.

Supreme Court

(2) The Supreme Court shall continue to consist of two branches, the Court of Appeal for Ontario and the High Court of Justice for Ontario. R.S.O. 1980, c. 223, ss. 2, 3.

Branches

3.—(1) The Court of Appeal shall consist of the Chief Justice of Ontario, who shall be president of the court, the Associate Chief Justice of Ontario and fourteen other judges to be called justices of appeal.

Court of Appeal

(2) Where the Chief Justice of Ontario is absent from Ontario or is for any reason unable to act, the powers and duties of the Chief Justice as president of the Court of Appeal shall be exercised and performed by the Associate Chief Justice of Ontario or, where both are absent or unable to act, by the senior justice of appeal who is present and able to act. R.S.O. 1980, c. 223, s. 4.

Absence of Chief Justice

4.—(1) The High Court shall consist of the Chief Justice of the High Court, who shall be president of the court, the Associate Chief Justice of the High Court and such number of other judges as is fixed under subsection (2). R.S.O. 1980, c. 223, s. 5 (1); 1981, c. 23, s. 2 (1).

High Court

(2) The Lieutenant Governor in Council may by regulation fix the number of judges of the High Court who are in addition to the Chief Justice and Associate Chief Justice, but where the number is reduced by regulation, the reduction shall not be applied to affect appointments existing at the time of the reduction. 1981, c. 23, s. 2 (2).

Number of judges

## COURTS OF JUSTICE

Absence of  
Chief Justice

(3) Where the Chief Justice of the High Court is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Justice of the High Court shall be exercised and performed by the Associate Chief Justice of the High Court or, where both are absent or unable to act, by the senior judge of the High Court who is present and able to act. R.S.O. 1980, c. 223, s. 5 (2).

Divisional  
Court

5.—(1) There shall be a division of the High Court to be known as the Divisional Court of the High Court of Justice for Ontario consisting of the Chief Justice of the High Court who shall be president of the court and such other judges of the High Court as the Chief Justice may designate from time to time.

Jurisdiction  
of judges

(2) Every judge of the High Court is also a judge of the Divisional Court. R.S.O. 1980, c. 223, s. 7.

Additional  
judges

6.—(1) For each of the offices of Chief Justice of Ontario and Associate Chief Justice of Ontario there shall be such additional offices of judges of the Court of Appeal as are from time to time required, to be held by Chief Justices of Ontario and Associate Chief Justices of Ontario who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the Court of Appeal.

R.S.C. 1970,  
c. J-1

## Idem

(2) For each of the offices of Chief Justice of the High Court and Associate Chief Justice of the High Court there shall be such additional offices of judge of the High Court as are from time to time required, to be held by Chief Justices of the High Court and Associate Chief Justices of the High Court who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the High Court. *New.*

Super-  
numerary  
judges

(3) For each office of judge of the Court of Appeal and of the High Court of Justice there shall be the additional office of supernumerary judge held by a judge of such court who has elected under the *Judges Act* (Canada) to hold office only as a supernumerary judge of that court. R.S.O. 1980, c. 223, s. 6.

Rank and  
precedence

7.—(1) The judges of the Supreme Court have rank and precedence as follows:

1. The Chief Justice of Ontario.
2. The Chief Justice of the High Court.



COURTS OF JUSTICE

- 3. The Associate Chief Justice of Ontario.
- 4. The Associate Chief Justice of the High Court.
- 5. The other judges of the Supreme Court, according to seniority of appointment. R.S.O. 1980, c. 223, s. 8.

(2) Among themselves, the judges of the Court of Appeal have rank and precedence, after the Chief Justice of Ontario and the Associate Chief Justice of Ontario, according to seniority of appointment to the Court of Appeal. *New.*

Court of Appeal

8. A judge appointed to the Court of Appeal or the High Court is a judge of the Supreme Court and, by virtue of his or her office, a judge of the branch of which he or she is not a member and, except as otherwise provided, all judges of the Supreme Court have equal jurisdiction, power and authority. R.S.O. 1980, c. 223, s. 9.

Jurisdiction of judges

9.—(1) The Chief Justice of Ontario may assign a judge of the Court of Appeal to perform, in Toronto, the work of a judge of the High Court.

Assignment of judges to another court

(2) The Chief Justice of Ontario, with the concurrence of the Chief Justice of the High Court, may assign a judge of the High Court to sit as a member of the Court of Appeal. R.S.O. 1980, c. 223, s. 42 (1, 2).

Idem

10.—(1) A council of the judges of the Supreme Court shall be held in Toronto at least once in each year, on a day fixed by the Chief Justice of Ontario, for the purpose of considering this Act, the Rules of Civil Procedure and the administration of justice generally.

Council of judges

(2) The judges shall report their recommendations to the Attorney General. R.S.O. 1980, c. 223, s. 118 (1, 2).

Recommendations

.....

12.—(1) Every District Court judge may be appointed as a local judge of the High Court.

Local judges

(2) Every local judge has the jurisdiction conferred by the Rules of Civil Procedure.

Jurisdiction



COURTS OF JUSTICE

Idem

R.S.C. 1970,  
c. D-8

(3) Subject to the Rules of Civil Procedure, every local judge has all the jurisdiction of a judge of the High Court to hear and determine actions under the *Divorce Act* (Canada) and, where a claim for other relief is joined in a petition for divorce, a local judge has the same jurisdiction to hear and determine the claim as a judge of the High Court.

Idem

(4) A local judge may act in any county or district. R.S.O. 1980, c. 223, s. 121.

JURISDICTION

High Court  
jurisdiction

**13.—**(1) Unless otherwise provided, proceedings in the Supreme Court shall be in the High Court.

.....

Composition  
of court for  
hearings

**14.—**(1) Unless otherwise provided by an Act or the Rules of Civil Procedure, every proceeding in the High Court shall be heard and determined by one judge of the High Court.

.....

Divisional  
Court  
jurisdiction  
R.S.C. 1970,  
c. D-8

**15.—**(1) Subject to the *Divorce Act* (Canada), an appeal lies to the Divisional Court from,

- (a) a final order of a judge or local judge of the High Court,
  - (i) for a single payment of not more than \$25,000, exclusive of costs,
  - (ii) for periodic payments that amount to not more than \$25,000, exclusive of costs, in the twelve months commencing on the date the first payment is due under the order,
  - (iii) dismissing a claim for an amount that is not more than the amount set out in subclause (i) or (ii), or

## COURTS OF JUSTICE

- (iv) dismissing a claim for an amount that is more than the amount set out in subclause (i) or (ii) and in respect of which the judge indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in subclause (i) or (ii);
- (b) an interlocutory order of a judge of the High Court, with leave as provided in the Rules of Civil Procedure, other than an order made on an appeal from the District Court;
- (c) an interlocutory order of a local judge of the High Court, with leave as provided in the Rules of Civil Procedure, other than an order that could have been made by a master;
- (d) a final order of a master;
- (e) a final order of a local judge of the High Court, where the order could have been made by a master.  
R.S.O. 1980, c. 223, s. 17.

(2) Where an appeal in a proceeding lies to the High Court and an appeal in the same proceeding lies to and is taken to the Divisional Court, the Divisional Court has jurisdiction to hear and determine the appeal that lies to the High Court at the same time as the appeal to the Divisional Court and may, on motion, transfer an appeal that has already been commenced in the High Court to the Divisional Court. *New.*

Combining of  
appeals lying  
to High  
Court

**16.**—(1) Unless otherwise provided, every proceeding in the Divisional Court shall be heard and determined by three judges sitting together.

Composition  
of court for  
hearings

(2) A proceeding in the Divisional Court may be heard and determined by one judge where the proceeding,

*Idem*

- (a) is an appeal under clause 15 (1) (d) or (e);
- (b) is an appeal under section 83 (from the Provincial Court (Civil Division)); or
- (c) is in a matter that the Chief Justice of the High Court or a judge designated by the Chief Justice is satisfied, from the nature of the issues involved and the necessity for expedition, can and ought to be heard and determined by one judge. R.S.O. 1980, c. 223, s. 46.

.....

COURTS OF JUSTICE

Court of  
Appeal  
jurisdiction

**17.—**(1) An appeal lies to the Court of Appeal from,

- (a) an order of the Divisional Court, on a question that is not a question of fact alone, with leave as provided in the Rules of Civil Procedure;
- (b) a final order of a judge of the High Court, except an order referred to in clause 15 (1) (a);
- (c) a final order of a local judge of the High Court, except an order referred to in clause 15 (1) (a) or where the order could have been made by a master. R.S.O. 1980, c. 223, s. 28 (1).

Combining of  
appeals lying  
to other  
courts

(2) Where an appeal in a proceeding lies to the Divisional Court or High Court, and an appeal in the same proceeding lies to and is taken to the Court of Appeal, the Court of Appeal has jurisdiction to hear and determine the appeal that lies to the Divisional Court or High Court at the same time as the appeal to the Court of Appeal and may, on motion, transfer an appeal that has already been commenced in the High Court or Divisional Court to the Court of Appeal. *New.*

Composition  
of court for  
hearings

**18.—**(1) Unless otherwise provided, every proceeding in the Court of Appeal shall be heard and determined by not fewer than three judges sitting together, and always by an uneven number of judges.

Idem  
R.S.C. 1970.  
c. D-8

(2) An appeal to the Court of Appeal from an interim order under section 10 of the *Divorce Act* (Canada) may be heard and determined by one judge, unless it is to be heard with an appeal that, but for subsection 17 (2), would have been heard by three judges of the Divisional Court. R.S.O. 1980, c. 223, s. 41.

.....

References to  
Court of  
Appeal

**19.—**(1) The Lieutenant Governor in Council may refer any question to the Court of Appeal for hearing and consideration.

Opinion of  
court

(2) The court shall certify its opinion to the Lieutenant Governor in Council, accompanied by a statement of the reasons therefor, and any judge who differs from the opinion may in like manner certify his or her opinion and reasons.



COURTS OF JUSTICE

(3) On the hearing of the question, the Attorney General of Ontario is entitled to make submissions to the court. Submissions by Attorney General

(4) Where a question relates to the constitutional validity or constitutional applicability of an Act of the Parliament of Canada or the Legislature, or of a regulation or by-law made thereunder, the Attorney General of Canada shall be notified and is entitled to make submissions to the court. Idem

(5) The court may direct that any person interested, or any one or more persons as representatives of a class of persons interested, be notified of the hearing and be entitled to make submissions to the court. Notice

(6) Where an interest affected is not represented by counsel, the court may request counsel to argue on behalf of the interest, and the reasonable expenses thereof shall be paid by the Treasurer of Ontario. Appointment of counsel

(7) The opinion of the court shall be deemed to be a judgment of the court and an appeal lies therefrom as from a judgment in an action. R.S.O. 1980, c.86. Appeal

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PART II

DISTRICT COURT OF ONTARIO

ORGANIZATION

25.—(1) The county and district courts, the courts of general sessions of the peace and the county and district court judges' criminal courts are amalgamated and continued as a single court of record having civil and criminal jurisdiction, named the District Court of Ontario. R.S.O. 1980, c. 100, s. 2. District Court

(2) The District Court shall be presided over by a judge of the court. R.S.O. 1980, c.100, s. 3. Judge to preside



## COURTS OF JUSTICE

- Judges**      **26.—**(1) The District Court shall consist of the Chief Judge of the District Court, who shall be president of the court, the Associate Chief Judge of the District Court, a senior judge for each county or district designated under clause (2) (b) and such number of other judges as is fixed under clause (2) (a).
- Regulations**      (2) The Lieutenant Governor in Council may make regulations,
- (a) fixing the number of judges of the court who are in addition to the Chief Judge, Associate Chief Judge and senior judges, but where the number is reduced by regulation, the reduction shall not be applied to affect appointments existing at the time of the reduction;
  - (b) designating counties and districts to which more than one judge shall be assigned; and
  - (c) establishing regions for the purposes of this Part. R.S.O. 1980, c. 101, ss. 1-4, 15, 16 (1).
- County or district judges presiding in District Court**      (3) A judge of a county or district court may preside as a judge of the District Court.
- Rights and privileges of judges preserved**      (4) Nothing in this Part affects the rights or privileges of a judge who was appointed as a judge of a county or district court before this Part comes into force. *New.*
- Chief Judge**      **27.—**(1) The Chief Judge of the District Court has general supervision and direction over the sittings of the court and the assignment of the judicial duties of the court. R.S.O. 1980, c. 101, s. 16 (4).
- Assignment of judges**      (2) At least one judge of the District Court shall be assigned by the Chief Judge to each county and district. *New.*
- Annual meeting in regions**      (3) For the purposes of arranging the sittings of the District Court and considering matters relating to the court and the judges, the Chief Judge shall convene a meeting of the judges of each region at least once in every year. R.S.O. 1980, c. 101, s. 16 (5).

COURTS OF JUSTICE

Absence of  
Chief Judge

(4) Where the Chief Judge is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Judge shall be exercised and performed by the Associate Chief Judge or, where both are absent or unable to act, by a judge designated by the Chief Judge. R.S.O. 1980, c. 101, s. 16 (3).

.....

Additional  
judges

**29.**—(1) For each of the offices of Chief Judge of the District Court and Associate Chief Judge of the District Court, there shall be such additional offices of judge of the District Court as are from time to time required, to be held by Chief Judges and Associate Chief Judges who have elected under the *Judges Act* (Canada) to perform only the duties of a judge of the District Court. *New.*

R.S.C. 1970,  
c. J-1

Super-  
numerary  
judges

(2) For each office of judge of the District Court, there shall be the additional office of supernumerary judge held by a judge of the court who has elected under the *Judges Act* (Canada) to hold office only as a supernumerary judge of the court. R.S.O. 1980, c. 101, s. 5 (1).

Rank and  
precedence

**30.** The judges of the District Court have rank and precedence as follows:

1. The Chief Judge of the District Court.
2. The Associate Chief Judge of the District Court.
3. The other judges of the District Court, according to seniority of appointment. R.S.O. 1980, c. 101, s. 6.

Annual  
meeting

**31.**—(1) A meeting of the judges of the District Court shall be held in Toronto at least once in every year, on a day fixed by the Chief Judge of the District Court, for the purpose of considering this Act, the Rules of Civil Procedure and the administration of justice generally. R.S.O. 1980, c. 101, s. 16 (8).

Recommen-  
dations

(2) The judges shall report their recommendations to the Attorney General. *New.*

COURTS OF JUSTICE

JURISDICTION

**Jurisdiction**            **32.—**(1) The District Court has jurisdiction to hear and determine any action except,

- (a) where the sum claimed or the value of the property that is the subject of the action exceeds \$25,000, exclusive of interest and costs; or
- (b) where another court is required by an Act to hear and determine the action.

**Idem**                    (2) The District Court does not have jurisdiction to grant prerogative remedies. R.S.O. 1980, c. 100, s. 14 (1).

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**Appeal to Court of Appeal**            **36.—**(1) An appeal from a final order of a judge of the District Court, except an order referred to in subsection (2), lies to the Court of Appeal. R.S.O. 1980, c. 100, ss. 31, 34.

**Appeal to Divisional Court**            (2) An appeal lies to the Divisional Court from a final order of a judge of the District Court,

- (a) for a single payment of not more than \$25,000, exclusive of costs;
- (b) for periodic payments that amount to not more than \$25,000, exclusive of costs, in the twelve months commencing on the date the first payment is due under the order;
- (c) dismissing a claim for an amount that is not more than the amount set out in clause (a) or (b); or
- (d) dismissing a claim for an amount that is more than the amount set out in clause (a) or (b) and in respect of which the judge indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in clause (a) or (b). *New.*

**Appeal from interlocutory orders**            (3) Subject to subsection (4), an appeal from an interlocutory order of a judge of the District Court lies to the High Court. R.S.O. 1980, c. 100, s. 40.



COURTS OF JUSTICE

(4) No appeal lies from an interlocutory order of a judge of the District Court made on an appeal from an interlocutory order of the Provincial Court (Family Division).

Idem

(5) An appeal from a certificate of assessment of costs issued in a proceeding in the District Court, where the appeal is on an issue in respect of which an objection was served under the Rules of Civil Procedure, lies to the High Court. *New.*

Appeal from assessment of costs

. . . . .

PART III

UNIFIED FAMILY COURT

38. The Unified Family Court is continued as a court of record in and for the Judicial District of Hamilton-Wentworth. R.S.O. 1980, c. 515, s. 2.

Unified Family Court

39.—(1) The Unified Family Court shall be presided over by a judge of the District Court who is a local judge of the High Court and who is authorized under subsection (2) to exercise the jurisdiction of a judge of the Provincial Court (Family Division). R.S.O. 1980, c. 515, s. 3 (1, 6).

Jurisdiction of judges

(2) The Lieutenant Governor in Council may authorize a judge of the District Court who is a local judge of the High Court to exercise the jurisdiction of a judge of the Provincial Court (Family Division). R.S.O. 1980, c. 515, s. 3 (2, 6).

Authority for family court matters

(3) All the jurisdiction of the Supreme Court or a judge thereof under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, may be exercised by a local judge of the High Court who is a judge who may preside over the Unified Family Court. R.S.O. 1980, c. 515, s. 3 (3); 1982, c. 21, s. 1.

Jurisdiction of local judge of High Court

(4) A judge who may preside over the Unified Family Court shall exercise his or her jurisdiction as a local judge of the High Court, a judge of the District Court, or a judge of the Provincial Court (Family Division) in the matters in which the Supreme Court, the District Court, or the Provincial Court (Family Division) or a judge thereof has jurisdiction under the statutory provisions set out in the Schedule to this Part. R.S.O. 1980, c. 515, s. 3 (4, 6).

Exercise of existing jurisdiction

40.—(1) Proceedings taken in a court in the Judicial District of Hamilton-Wentworth under the statutory provisions set out in the Schedule to this Part, other than by way of appeal, shall be commenced and titled in the Unified Family Court and the jurisdiction of the court shall be exercised in the Unified Family Court. R.S.O. 1980, c. 515, s. 4 (1).

Proceedings in Unified Family Court



## COURTS OF JUSTICE

Idem  
R.S.C. 1970,  
c. D-8;  
R.S.O. 1980,  
cc. 152, 68

(2) A motion for interim relief under the *Divorce Act* (Canada), the *Family Law Reform Act* or the *Children's Law Reform Act* in a proceeding in the Supreme Court or District Court that is required or permitted by the Rules of Civil Procedure or an order of the court to be heard in the Judicial District of Hamilton-Wentworth, shall be heard in the Unified Family Court. *New.*

*Parens  
patriae  
powers*

(3) The court has and may exercise the same *parens patriae* powers as the Supreme Court in respect of any matter before it. R.S.O. 1980, c. 515, s. 4 (3).

No jury

(4) All proceedings commenced in or transferred to the Unified Family Court shall be heard and determined without a jury. R.S.O. 1980, c. 515, s. 7 (2).

Consent to  
jurisdiction

**41.** Where a proceeding is commenced in the Unified Family Court in a matter over which jurisdiction may be exercised in the Unified Family Court and is combined with a related matter in the jurisdiction of the judge but respecting which jurisdiction may not be exercised in the Unified Family Court, the court may, with leave of the judge and the consent of the parties, hear and determine the combined matters. R.S.O. 1980, c. 515, s. 5.

Appeals

**46.—**(1) Subject to subsections (2) and (3), a provision for an appeal from an order made under the statutory provisions set out in the Schedule to this Part applies to the order when made in the exercise of the jurisdiction by a judge presiding over the Unified Family Court. R.S.O. 1980, c. 515, s. 15 (1).

Idem

(2) Where an order made by the Unified Family Court under a statutory provision set out in the Schedule to this Part is within the jurisdiction of the Supreme Court or the District Court outside the Judicial District of Hamilton-Wentworth, the order shall, for the purposes of an appeal, be deemed to have been made by a judge of the High Court. *New.*

Idem

(3) A provision for an appeal to the District Court or a judge thereof from an order that is made by the Unified Family Court under the statutory provisions set out in the Schedule to this Part shall be deemed to provide for an appeal to the High Court.

Idem

(4) Where no provision is made for an appeal from an order of a judge presiding over the Unified Family Court, an appeal lies,

COURTS OF JUSTICE

- (a) to the Court of Appeal from a final order, except an order referred to in clause (b);
- (b) to the Divisional Court from a final order,
  - (i) for a single payment of not more than \$25,000, exclusive of costs,
  - (ii) for periodic payments that amount to not more than \$25,000, exclusive of costs, in the twelve months commencing on the date the first payment is due under the order,
  - (iii) dismissing a claim for an amount that is not more than the amount set out in subclause (i) or (ii), or
  - (iv) dismissing a claim for an amount that is more than the amount set out in subclause (i) or (ii) and in respect of which the judge indicates that if the claim had been allowed the amount awarded would have been not more than the amount set out in subclause (i) or (ii); or
- (c) to the High Court from an interlocutory order.  
R.S.O. 1980, c. 515, s. 15 (2, 3).

47.—(1) A judge presiding over the Unified Family Court has all the powers of a magistrate under the *Criminal Code* (Canada) for the purposes of proceedings under the *Criminal Code* (Canada) and the Unified Family Court,

Criminal jurisdiction  
R.S.C. 1970,  
c. C-34

- (a) shall be deemed to be and shall sit as the Provincial Offences Court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*; and
- (b) is a youth court for the purposes of the *Young Offenders Act* (Canada). R.S.O. 1980, c. 515, s. 17; 1983, c. 80, s. 3; 1983, c. 86, s. 1.

R.S.O. 1980,  
c. 400

S.C. 1980-  
81-82-83,  
c. 110

(2) Clause (1) (b) is repealed on the 1st day of April, 1985.  
1983, c. 86, s. 2.

Repeal of  
s. (1) (b)

COURTS OF JUSTICE

SCHEDULE

Jurisdiction under the following statutory provisions:	
Statutes	Provisions
Annulment of Marriages Act (Ontario) (Canada)	All
Child Welfare Act	Parts II, III and IV
Children's Law Reform Act	All, Except Sections 60 and 61
Children's Residential Services Act	Subs. 18 (1) except Cls. (a) and (b)
Divorce Act (Canada)	All
Education Act	Sections 29 and 30
Family Law Reform Act	All, except Part V
Marriage Act	Sections 6 and 9
Minors' Protection Act	Section 2
Reciprocal Enforcement of Maintenance Orders Act, 1982	All
Training Schools Act	Section 8
Young Offenders Act (Canada)	All
R.S.O. 1980, c. 515, Sched.; 1982, c. 20, s. 5.	

PART IV

PROVINCIAL COURTS

JUDGES

Appointment of judges	<b>52.—</b> (1) The Lieutenant Governor in Council, on the recommendation of the Attorney General, may appoint such provincial judges as are considered necessary. R.S.O. 1980, c. 398, s. 2.
Qualifications	(2) No person shall be appointed as a provincial judge unless he or she has been a member of the bar of one of the provinces of Canada for at least ten years. <i>New.</i>
Other employment	<b>53.—</b> (1) A provincial judge shall devote his or her whole time to the performance of his or her duties as a judge, except as authorized by the Lieutenant Governor in Council.
Idem	(2) Notwithstanding subsection (1), a provincial judge who, before the coming into force of this Part, had the consent of the Attorney General to act as an arbitrator or conciliator may continue to so act. R.S.O. 1980, c. 398, s. 12.



## COURTS OF JUSTICE

**54.—**(1) Every provincial judge shall retire upon attaining the age of sixty-five years. Retirement

(2) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate, judge of a juvenile and family court or master after the 1st day of July, 1941 and before the 2nd day of December, 1968 shall retire upon attaining the age of seventy years. Idem

(3) Notwithstanding subsection (1), a provincial judge appointed as a full-time magistrate on or before the 1st day of July, 1941 shall retire upon attaining the age of seventy-five years. R.S.O. 1980, c. 398, s. 5 (1-3). Idem

(4) A judge who has attained the age for retirement under subsection (1) may, subject to the annual approval of the Chief Judge, continue in office as a full-time or part-time judge until he or she attains the age of seventy years, and a judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in office as a full-time or part-time judge until he or she has attained the age of seventy-five years. Continuation of judges in office

(5) An associate chief judge or senior judge who is in office upon attaining the age for retirement under subsection (1) may, subject to the annual approval of the Chief Judge, continue in that office until he or she has attained the age of seventy years and an associate chief judge or senior judge who has attained the age of seventy years may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years. Continuation of associate chief judge and senior judges in office

(6) A chief judge who is in office upon attaining the age for retirement under subsection (1) or (2) may, subject to the annual approval of the Judicial Council, continue in that office until he or she has attained the age of seventy-five years. R.S.O. 1980, c. 398, s. 5 (4, 5, 6); 1983, c. 18, s. 1. Continuation of chief judge in office

**55.** A provincial judge may at any time resign from his or her office in writing, signed by the judge and delivered to the Lieutenant Governor. R.S.O. 1980, c. 398, s. 6. Resignation

**56.—**(1) A provincial judge may be removed from office before attaining retirement age only if, Removal for cause

- (a) a complaint regarding the judge has been made to the Judicial Council; and
- (b) the removal is recommended by an inquiry held under section 61 on the ground that the judge has become incapacitated or disabled from the due execution of his or her office by reason of,



## COURTS OF JUSTICE

(i) infirmity,

(ii) conduct that is incompatible with the execution of his or her office, or

(iii) having failed to perform the duties of his or her office. R.S.O. 1980, c. 398, s. 4 (1).

Order for  
removal

(2) An order removing a provincial judge from office under this section may be made by the Lieutenant Governor on the address of the Legislative Assembly. R.S.O. 1980, c. 398, s. 4 (3).

Judicial  
Council

**57.—**(1) The Judicial Council for Provincial Judges is continued and shall be composed of,

(a) the Chief Justice of Ontario, who shall preside over the Judicial Council;

(b) the Chief Justice of the High Court;

(c) the Chief Judge of the District Court;

(d) the Chief Judge of the Provincial Court (Criminal Division);

(e) the Chief Judge of the Provincial Court (Family Division);

(f) the Chief Judge of the Provincial Court (Civil Division);

(g) the Treasurer of The Law Society of Upper Canada; and

(h) not more than two other persons appointed by the Lieutenant Governor in Council. R.S.O. 1980, c. 398, s. 7 (1).

Senior  
Master

(2) Where the Judicial Council is considering any matter relating to a master, the Senior Master is entitled to be present and participate as a member of the Council. *New.*

Quorum

(3) A majority of members of the Judicial Council constitutes a quorum and is sufficient for the exercise of all the jurisdiction and powers of the Judicial Council.

Staff

R.S.O. 1980,  
c. 418

(4) Such officers and employees of the Judicial Council as are considered necessary may be appointed under the *Public Service Act*. R.S.O. 1980, c. 398, s. 7 (2, 3).

## COURTS OF JUSTICE

(5) The Judicial Council may engage persons, including counsel, to assist it in its investigations. *New.* Expert assistance

**58.—**(1) The functions of the Judicial Council are, Functions

(a) to consider all proposed appointments of provincial judges and make a report thereon to the Attorney General;

(b) to receive and investigate complaints against provincial judges. R.S.O. 1980, c. 398, s. 8 (1).

(2) No action or other proceeding for damages shall be instituted against the Judicial Council or any member or officer thereof or any person acting under its authority for any act done in good faith in the execution or intended execution of its or his or her duty. R.S.O. 1980, c. 398, s. 8 (6). Liability for damages

**59.—**(1) Where the Judicial Council receives a complaint against a provincial judge, it shall take such action to investigate the complaint as it considers advisable. R.S.O. 1980, c. 398, s. 8 (1) (c). Investigation of complaints

(2) The Judicial Council may transmit such complaints as it considers appropriate to the Chief Judge of the Provincial Court (Criminal Division), the Chief Judge of the Provincial Court (Family Division), the Chief Judge of the Provincial Court (Civil Division) or the Senior Master, as it considers appropriate. R.S.O. 1980, c. 398, s. 8 (2). Referral to Chief Judges

(3) The proceedings of the Judicial Council shall not be public, but it may inform the Attorney General respecting matters that it has investigated and the Attorney General may make public the fact that an investigation has been undertaken. R.S.O. 1980, c. 398, s. 8 (4). Proceedings not public

(4) The Judicial Council may order that information or documents relating to its proceedings not be published or disclosed except as required by law. *New.* Prohibiting publication

(5) The Judicial Council has all the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the investigation as if it were an inquiry under that Act. R.S.O. 1980, c. 398, s. 8 (5). Powers  
R.S.O. 1980,  
c. 411

(6) Where the Judicial Council has dealt with a complaint regarding a provincial judge, it shall inform, Notice of disposition

(a) the person who made the complaint; and

## COURTS OF JUSTICE

(b) where the complaint was brought to the attention of the judge, the judge,

of its disposition of the complaint. *New.*

Report and  
recommen-  
dations

(7) The Judicial Council may report its opinion regarding the complaint to the Attorney General and may recommend,

(a) that an inquiry be held under section 60;

(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the investigation. R.S.O. 1980, c. 398, s. 8 (3).

Copy to  
judge

(8) A copy of a report made under subsection (7) shall be given to the judge.

Right to be  
heard

(9) The Judicial Council shall not make a report under subsection (7) unless the judge was notified of the investigation and given an opportunity to be heard and to produce evidence on his or her behalf.

Publication  
of report

(10) Where the Judicial Council makes a report to the Attorney General under subsection (7), the Attorney General may make all or part of the report public, if he or she is of the opinion that it is in the public interest to do so. *New.*

Inquiry

**60.**—(1) The Lieutenant Governor in Council may appoint a judge of the Supreme Court to inquire into the question whether a provincial judge should be removed from office.

Powers

(2) The *Public Inquiries Act* applies to an inquiry under subsection (1). R.S.O. 1980, c. 398, s. 4 (2).

Report

(3) The report of the inquiry may recommend,

(a) that the judge be removed from office;

(b) that the judge be compensated for all or part of the costs incurred by the judge relating to the inquiry. *New.*

Tabling of  
report

(4) The report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session. R.S.O. 1980, c. 398, s. 4 (3).

Jurisdiction  
of judges

**61.**—(1) Every provincial judge has jurisdiction throughout Ontario and,



## COURTS OF JUSTICE

(a) shall exercise all the powers and perform all the duties conferred or imposed on a provincial judge by or under any Act of the Legislature or of the Parliament of Canada;

(b) subject to subsection (2), may exercise all the powers and perform all the duties conferred or imposed on a magistrate, provincial magistrate or one or more justices of the peace under any Act of the Parliament of Canada. R.S.O. 1980, c. 398, s. 9 (1) (a, c).

(2) A provincial judge shall not exercise the jurisdiction conferred on a magistrate under Part XVI of the *Criminal Code* (Canada) unless, Idem  
R.S.C. 1970,  
c. C-34

(a) he or she has been a member of the bar of one of the provinces of Canada; or

(b) he or she has acted as a provincial judge for a period of five years,

and the judge is so designated by the Lieutenant Governor in Council. R.S.O. 1980, c. 398, s. 9 (3).

(3) Every provincial judge is a justice of the peace and commissioner for taking affidavits. R.S.O. 1980, c. 398, s. 9 (1) (d). Idem

**62.** Jurisdiction conferred on a provincial judge, justice of the peace or provincial court shall, in the absence of express provision for procedures therefor in any Act, regulation or rule, be exercised in any manner consistent with the due administration of justice. R.S.O. 1980, c. 398, s. 9 (2). Where  
procedures  
not provided

**63.—**(1) The Lieutenant Governor in Council may appoint a provincial judge as Chief Judge of the Provincial Court (Criminal Division), a provincial judge as Chief Judge of the Provincial Court (Family Division) and a provincial judge as Chief Judge of the Provincial Court (Civil Division). Chief Judges

(2) The Chief Judge of the Provincial Court (Criminal Division) is Chief Judge of the Provincial Offences Court. R.S.O. 1980, c. 398, s. 10 (1, 2). Chief Judge  
of Provincial  
Offences  
Court

(3) The Chief Judge of the Provincial Court (Family Division) is the Chief Judge of the Provincial Court (Family Division) sitting as the Provincial Offences Court. Idem

(4) Subsection (2) does not apply to the Unified Family Court sitting as the Provincial Offences Court. 1983, c. 80, s. 2 (1). Idem



COURTS OF JUSTICE

Duties of Chief Judge (5) Each Chief Judge has general supervision and direction over the sittings of his or her court and the assignment of the judicial duties of the court except that in counties and districts where the Provincial Court (Civil Division) is presided over by a judge of the District Court, the Chief Judge of the District Court and, subject to the authority of the Chief Judge, the senior judge of the District Court in that county or district has general supervision and direction over the sittings of the court and the assignment of the judicial duties of the court.

Associate Chief Judge (6) The Lieutenant Governor in Council may appoint a provincial judge as Associate Chief Judge of the Provincial Court (Criminal Division) and a provincial judge as Associate Chief Judge of the Provincial Court (Family Division). R.S.O. 1980, c. 398, s. 10 (3, 4).

Absence of Chief Judge (7) Where the Chief Judge is absent from Ontario or is for any reason unable to act, all the powers and duties of the Chief Judge shall be exercised and performed by the Associate Chief Judge or, where both are absent or unable to act, by a judge designated by the Chief Judge. *New.*

. . . . .

PROVINCIAL COURT (CRIMINAL DIVISION)

Provincial Court (Criminal Division) **66.—**(1) The provincial courts (criminal division) for the counties and districts are amalgamated and continued as a single court of record named the Provincial Court (Criminal Division).

Judge to preside (2) The Provincial Court (Criminal Division) shall be presided over by a provincial judge. R.S.O. 1980, c. 398, s. 14.

Exercise of criminal jurisdiction **67.** A provincial judge shall exercise the powers and perform the duties vested in him or her as a magistrate, provincial magistrate or one or more justices of the peace under section 62 sitting in the Provincial Court (Criminal Division). R.S.O. 1980, c. 398, s. 15.

PROVINCIAL OFFENCES COURT

Provincial Offences Court **68.—**(1) The provincial offences courts for the counties and districts are amalgamated and continued as a single court of record named the Provincial Offences Court.

Judge or justice of the peace to preside (2) The Provincial Offences Court shall be presided over by a provincial judge or justice of the peace. R.S.O. 1980, c. 398, s. 18 (1).

Jurisdiction R.S.O. 1980, c. 400 **69.** The Provincial Offences Court shall perform any function assigned to it by or under the *Provincial Offences Act* or any other Act. R.S.O. 1980, c. 398, s. 18 (2).

COURTS OF JUSTICE

**70.**—(1) A proceeding in the Provincial Offences Court against a young person as defined in the *Provincial Offences Act* shall be conducted in the Provincial Court (Family Division) or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as the Provincial Offences Court. 1983, c. 80, s. 2 (2).

Sittings:  
young  
persons

. . . . .

PROVINCIAL COURT (FAMILY DIVISION)

**74.**—(1) The provincial courts (family division) for the counties and districts are amalgamated and continued as a single court of record named the Provincial Court (Family Division).

Provincial  
Court  
(Family  
Division)

(2) The Provincial Court (Family Division) shall be presided over by a provincial judge. R.S.O. 1980, c. 398, s. 23 (1).

Judge to  
preside

**75.**—(1) The Provincial Court (Family Division),

Jurisdiction

- (a) shall be deemed to be and shall sit as the Provincial Offences Court for the purpose of dealing with young persons as defined in the *Provincial Offences Act*; R.S.O. 1980, c. 400
- (b) is a youth court for the purposes of the *Young Offenders Act* (Canada); and S.C. 1980-81-82-83, c. 110
- (c) shall perform any function assigned to it by or under the *Family Law Reform Act*, the *Children's Law Reform Act*, the *Child Welfare Act* or any other Act. R.S.O. 1980, c. 398, s. 23 (2); 1983, c. 80, s. 2 (3); 1983, c. 85, s. 1. R.S.O. 1980, cc. 152, 68, 66

(2) Clause (1) (b) is repealed on the 1st day of April, 1985. 1983, c. 85, s. 2.

Repeal of  
s. (1) (b)

. . . . .

PROVINCIAL COURT (CIVIL DIVISION)

**77.**—(1) The small claims courts and the Provincial Court (Civil Division) are amalgamated and continued as a single court of record named the Provincial Court (Civil Division) and may also be known as the Small Claims Court.

Provincial  
Court (Civil  
Division)

(2) The Provincial Court (Civil Division) shall be presided over by,

Judges to  
preside

## COURTS OF JUSTICE

- (a) a provincial judge; or
- (b) a judge of the District Court.

Deputy  
judges

(3) A judge of the District Court or the Chief Judge of the Provincial Court (Civil Division) may, with the approval of the Attorney General, appoint a barrister and solicitor to act as a deputy judge of the Provincial Court (Civil Division), and the person so appointed may preside over the court in actions for not more than \$1,000. R.S.O. 1980, c. 476, ss. 3, 6, 14, 15.

Jurisdiction

**78.—(1)** The Provincial Court (Civil Division),

- (a) has jurisdiction in any action for the payment of money where the amount claimed does not exceed \$1,000 exclusive of interest and costs;
- (b) has jurisdiction in any action for the recovery of possession of personal property where the value of the property does not exceed \$1,000; and
- (c) shall perform any function assigned to it by or under an Act. R.S.O. 1980, c. 476, s. 55.

Idem

(2) In the Judicial District of York and in such other areas as are designated under clause 87 (f), the maximum claim or value of \$1,000 set out in subsection (1) shall be \$3,000 in each instance and not as set out therein. R.S.O. 1980, c. 397, s. 6 (1).

. . . . .

Representen-  
tation

**79.** A party may be represented in a proceeding in the Provincial Court (Civil Division) by counsel or an agent but the court may exclude from a hearing anyone, other than a barrister and solicitor qualified to practise in Ontario, appearing as an agent on behalf of a party if it finds that such person is not competent properly to represent the party or does not understand and comply at the hearing with the duties and responsibilities of an advocate. R.S.O. 1980, c. 476, s. 100.

. . . . .

Appeals

**83.** An appeal lies to the Divisional Court from a final order of the Provincial Court (Civil Division) in an action,

- (a) for the payment of money in excess of \$500, excluding costs; or
- (b) for the recovery of possession of personal property exceeding \$500 in value. R.S.O. 1980, c. 476, s. 108.



COURTS OF JUSTICE

. . . . .

88.—(1) There shall be a committee to be known as the Ontario Provincial Courts Committee, composed of three members, of whom,

- (a) one shall be appointed jointly by the Provincial Judges Association (Criminal Division), the Ontario Family Court Judges Association and the Provincial Court Judges Association of Ontario (Civil Division);
- (b) one shall be appointed by the Lieutenant Governor in Council; and
- (c) one, to be the chairman, shall be appointed jointly by the bodies referred to in clauses (a) and (b).

(2) The function of the Ontario Provincial Courts Committee is to inquire into and make recommendations to the Lieutenant Governor in Council respecting any matter relating to the remuneration, allowances and benefits of provincial judges, including the matters referred to in clauses 87 (b) and (c).

(3) The Ontario Provincial Courts Committee shall make an annual report of its activities to the Lieutenant Governor in Council.

(4) Recommendations of the Committee and its annual report under subsections (2) and (3) shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days of the commencement of the next ensuing session. 1983, c. 78, s. 2 (2).

. . . . .

PART VI

COURTS ADMINISTRATION

91. The Attorney General shall superintend all matters connected with the administration of the courts, other than matters that are assigned by law to the judiciary. *New.*

92.—(1) There shall be an advisory council to be known as the Ontario Courts Advisory Council composed of,



COURTS OF JUSTICE

- (a) the Chief Justice of Ontario who shall preside, the Chief Justice of the High Court, the Associate Chief Justice of Ontario and the Associate Chief Justice of the High Court;
- (b) the Chief Judge of the District Court, the Associate Chief Judge of the District Court and the Senior Judge of the District Court for the Judicial District of York;
- (c) the Chief Judge of the Provincial Court (Criminal Division) and the Associate Chief Judge of the Provincial Court (Criminal Division);
- (d) the Chief Judge of the Provincial Court (Family Division) and the Associate Chief Judge of the Provincial Court (Family Division); and
- (e) the Chief Judge of the Provincial Court (Civil Division).

Functions

(2) The function of the Ontario Courts Advisory Council is to consider any matter relating to the administration of the courts that is referred to it by the Attorney General or that it considers appropriate on its own initiative, and to make recommendations thereon to the Attorney General and to the chief justices and chief judges of the various courts. *New.*

. . . . .

PART VII

JUDGES AND OFFICERS

Oath of office

**96.** Every judge or officer of a court in Ontario shall, before entering on the duties of office, take and sign the following oath or affirmation in either the English or French language:

I solemnly swear (affirm) that I will faithfully, and to the best of my skill and knowledge, execute the duties of .....  
So help me God. (*Omit this line in an affirmation*)

R.S.O. 1980, c. 223, s. 84 (1).

Persona designata abolished

**97.** Where an adjudicative function is given by an Act to a judge or officer of a court in Ontario, the jurisdiction shall be deemed to be given to the court. *New.*

COURTS OF JUSTICE

98. Every judge of a court in Ontario and every master of the Supreme Court has the same immunity from liability as a judge of the Supreme Court. R.S.O. 1980, c. 223, s. 100 (4); R.S.O. 1980, c. 398, s. 13.

Liability of judges

. . . . .

PART VIII

COURT PROCEEDINGS

. . . . .

155. The Federal Court of Canada has jurisdiction,

Jurisdiction of Federal Court

(a) in controversies between Canada and Ontario;

(b) in controversies between Ontario and any other province in which an enactment similar to this section is in force,

in accordance with section 19 of the *Federal Court Act* (Canada). R.S.O. 1980, c. 125, s. 1.

R.S.C. 1970 (2nd Supp.), c. 10

. . . . .



SURROGATE COURTS ACT

R.S.U. 1980, c. 491  
with amendments to date,  
including 1984, c. 11, s. 215

Note:

This statute grants to the Surrogate Court all jurisdiction in testamentary matters, subject to the concurrent jurisdiction of the High Court of Justice established under the Courts of Justice Act. It provides for the appointment of judges of the Surrogate Court by the province, but sittings are usually presided over by judges of the District Court.

This statute contains 80 sections, and only provisions of constitutional law interest are reproduced below.



SURROGATE COURTS ACT

R.S.O. 1980, c. 491

et ses modifications à jour,  
y inclus 1984, c. 11, art. 215

Note:

Cette loi confère à la Cour des successions et des tutelles toute compétence en matière testamentaire sous réserve de la juridiction concurrente de la Haute Cour de justice établie sous l'autorité du Courts of Justice Act.

Même s'il est prévu que les juges de ce tribunal sont nommés par la province, ce sont des juges de la Cour de district qui président habituellement à ses destinées.

Cette loi compte 80 articles. Seules les dispositions d'intérêt constitutionnel sont reproduites ici.

Surrogate Courts Act

2. There shall be in and for every county a court of record styled "The Surrogate Court of the County (or Judicial District or District) of..... (naming the county or district)". R.S.O. 1970, c. 451, s. 2.

Surrogate court for each county

5. Every surrogate court has the like powers as is possessed by the Supreme Court of enforcing its judgments and orders in any part of Ontario, and may issue the like writs and process as may be issued out of the Supreme Court and the same have the like force and effect as writs and processes issued out of the Supreme Court. R.S.O. 1970, c. 451, s. 5.

Power to enforce judgments and orders

8.—(1) The Lieutenant Governor in Council shall appoint as many judges of the surrogate courts as the Lieutenant Governor in Council considers necessary and may designate one of the judges of a surrogate court as the senior judge of the court.

Appointment of judges

(2) Every judge of a surrogate court shall hold office during good behaviour and may be removed from office by the Lieutenant Governor in Council for inability, incapacity or misbehaviour established to the satisfaction of the Lieutenant Governor in Council. 1979, c. 66, s. 18 (2).

Term of office

22. Subject to the *Judicature Act*, all jurisdiction and authority in relation to matters and causes testamentary, and in relation to the granting or revoking of probate of wills and letters of administration of the property of deceased persons, and all matters arising out of or connected with the grant or revocation of grant of probate or administration, are vested in the several surrogate courts. R.S.O. 1970, c. 451, s. 21.

Testamentary jurisdiction to be exercised by the surrogate courts  
R.S.O. 1980, c. 223

23. An action for a legacy or for the distribution of a residue shall not be entertained by a surrogate court. R.S.O. 1970, c. 451, s. 22.

No action for legacy or distribution of residue

## SURROGATE COURTS

Removal of  
proceeding  
to S.C.O.

**32.**—(1) Any contentious cause or proceeding may be removed into the Supreme Court by order of a judge of such court if it is of such a nature and of such importance as to render it proper that it should be disposed of by the Supreme Court, and the property of the deceased exceeds \$20,000 in value.

Right of  
appeal

**33.**—(1) Any party or person taking part in the proceedings may appeal to the Divisional Court from any order, determination or judgment of a surrogate court or a judge thereof in any matter or cause if the value of the property affected by such order, determination or judgment exceeds \$200.

Rights of  
persons  
interested  
to appeal

(2) Where the claimant or personal representative having a right of appeal does not appeal from the order, judgment or determination, the Official Guardian or any person beneficially interested in the estate may, by leave of a judge of the Divisional Court, appeal therefrom.

Appeals  
from  
interlocutory  
orders, etc.

**34.** In the case of any order, determination or judgment made or given by a surrogate court or a judge thereof in respect of which an appeal is not otherwise provided under this Act, an appeal lies to the Divisional Court in accordance with the rules of court. R.S.O. 1970, c. 451, s. 33, *revised*.

FUNDAMENTAL RIGHTS



LIBERTÉS FONDAMENTALES





## FUNDAMENTAL RIGHTS

### Introduction

In addition to the Canadian Charter of Rights and Freedoms, which forms Part I of the Constitution Act, 1982, reproduced in volume 1 of this collection, pp. A127, and subs., and the federal legislation referred to in volume 2 of this collection, Chapter H, fundamental rights are also protected by the following provincial statutes of Ontario, reproduced below:

1. Act Respecting Certain Rights and Liberties of the People, R.S.O. 1897, c. 322; R.S.O. 1980, vol. 9, p. 1.
2. Religious Freedom Act, R.S.O. 1980, c. 447.
3. Human Rights Code, 1981, S.O. 1981, c. 53.

Other statutes of Ontario, not reproduced here, contain provisions concerning fundamental rights. Among the most important ones, the following should be mentioned:

1. Employment Standards Act, R.S.O. 1980, c. 137, as amended.
2. Rights of Labour Act, R.S.O. 1980, c. 456.
3. Labour Relations Act, R.S.O. 1980, c. 228.
4. Crown Employees Collective Bargaining Act, R.S.O. 1980, c. 108.
5. Blind Persons' Rights Act, R.S.O. 1980, c. 44.
6. Consumer Reporting Act, R.S.O. 1980, c. 89.

### Selected references:

- Keene, Judith, Human Rights in Ontario, Agincourt, Ont., Carswell, 1983, 380 p.
- Hunter, Ian, "Liberty and Equality: A Tale of Two Codes," (1983), 29 McGill Law Journal 1-23.

## LIBERTES FONDAMENTALES

### Introduction

Outre la Charte canadienne des droits et libertés contenue dans la Partie I de la Loi constitutionnelle de 1982 reproduite aux pages A 127 et suivantes du volume 1 de cette collection et la législation fédérale rapportée au chapitre H du volume 2 de cette collection, les lois provinciales suivantes, reproduites ci-après, assurent la protection des libertés fondamentales en Ontario:

1. Act respecting Certain Rights and Liberties of the People, R.S.O. 1897, c. 322; R.S.O. 1980, v. 9, p. 1
2. Religious Freedom Act, R.S.O. 1980, c. 447
3. Human Rights Code, 1981, S.O. 1981, c. 53

D'autres lois ontariennes, non reproduites ici, renferment également des dispositions relatives aux libertés fondamentales. Parmi les plus importantes, il y a lieu de signaler les suivantes:

1. Employment Standards Act, R.S.O. 1980, c. 137 et ses modifications
2. Rights of Labour Act, R.S.O. 1980, c. 456
3. Labour Relations Act, R.S.O. 1980, c. 228
4. Crown Employees Collective Bargaining Act, R.S.O. 1980, c. 108
5. Blind Persons' Rights Act, R.S.O. 1980, c. 44
6. Consumer Reporting Act, R.S.O. 1980, c. 89

### Source choisie

Keene, Judith, Human Rights in Ontario, Agincourt (Ont.), Carswell, 1983, 380 p.

Hunter, Ian "Liberty and Equality: a Tale of Two Codes" (1983) 29 McGill Law Journal, pp. 1-23.

An Act respecting Certain Rights and  
Liberties of the People

R.S.O. 1897, c. 322; R.S.O. 1980, vol. 9, p. 1

**H**IS MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows:—

\* \* \* \* \*

**2.** No man shall be taken or imprisoned nor prejudged of  
life or limb, nor be disseized or put out of his freehold,  
franchises, or liberties, or free customs, nor be outlawed, or  
exiled, or any otherwise destroyed, unless he be brought in  
to answer and prejudged of the same by due course of law;  
nor shall the King pass upon him, nor condemn him, but  
by lawful judgment of his peers, or by the law of the land;  
and the King shall sell to no man, nor deny or defer to any  
man, either justice or right. 25 Edw. I, (Magna Carta), c. 29;  
5 Edw. III, c. 9; 25 Edw. III, st. 5, c. 4; and 28 Edw. III, c. 3.

Imprison-  
ment, etc.,  
contrary  
to law.

Administra-  
tion of  
justice.

**3.** It is provided, agreed, and granted, that all persons,  
as well of high as of low estate, shall receive justice in the  
King's court; and none from henceforth shall take any revenge  
or distress of his own authority, without award of the King's  
court, though he have damage or injury, whereby he would  
have amends of his neighbour, either higher or lower. 52  
Hen. III, (St. of Marlbridge), c. 1.

Of wrongful  
distresses,  
or defiances of  
the King's  
courts.

\_\_\_\_\_





## Religious Freedom Act

R.S.O. 1980, c. 447

**W**HEREAS the recognition of legal equality among all <sup>Preamble</sup> religious denominations is an admitted principle of Provincial legislation; And whereas, in the state and condition of this Province, to which such principle is peculiarly applicable, it is desirable that the same should receive the sanction of direct legislative authority, recognizing and declaring the same as a fundamental principle of the civil policy of this Province:

*Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—*

**1.** The free exercise and enjoyment of religious profession and worship, without discrimination or preference, provided the same <sup>Free exercise of religious profession, etc., guaranteed</sup> be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province, is by the constitution and laws of this Province assured to all Her Majesty's subjects within the same. R.S.O. 1897, c. 306, s. 1.

## An Act to revise and extend Protection of Human Rights in Ontario

S.O. 1981, c. 53

### Preamble

**W**HEREAS recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

**AND WHEREAS** it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province;

**AND WHEREAS** these principles have been confirmed in Ontario by a number of enactments of the Legislature and it is desirable to revise and extend the protection of human rights in Ontario;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### PART I

#### FREEDOM FROM DISCRIMINATION

##### Services

**1.** Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.

##### Accommodation

**2.—(1)** Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin, colour, ethnic

## CODE DES DROITS DE LA PERSONNE

L.O. 1981, c. 53

CONSIDÉRANT que la reconnaissance de la dignité inhérente à tous les membres de la famille humaine et de leurs droits égaux et inaliénables constitue le fondement de la liberté, de la justice et de la paix dans le monde et est conforme à la Déclaration universelle des droits de l'homme proclamée par les Nations unies; Préambule

CONSIDÉRANT que l'Ontario a pour principe de reconnaître la dignité et la valeur de la personne et d'assurer à tous les mêmes droits et avantages, sans discrimination contraire à la loi, et qu'elle vise à créer un climat de compréhension et de respect mutuel de la dignité et de la valeur de la personne de façon que chacun s'estime partie intégrante de la collectivité et apte à contribuer pleinement à l'avancement et au bien-être de son milieu et de sa province;

ET CONSIDÉRANT que ces principes sont confirmés en Ontario par un certain nombre de lois et qu'il est opportun de réviser et d'accroître la protection des droits de la personne en Ontario;

*Pour ces motifs, Sa Majesté, de l'avis et du consentement de l'Assemblée législative de la province de l'Ontario, décrète ce qui suit :*

## PREMIÈRE PARTIE

## ÉGALITÉ DES DROITS

**1** La personne a droit à un traitement égal en matière de services, de biens ou d'installations, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 1. Service

**2 (1)** La personne a droit à un traitement égal en matière d'occupation d'un logement, sans discrimination fondée sur la Logement



## HUMAN RIGHTS CODE

origin, citizenship, creed, sex, age, marital status, family status, handicap or the receipt of public assistance.

- |   |  |
|---|--|
| Harassment<br>in accom-<br>modation   | (2) Every person who occupies accommodation has a right to freedom from harassment by the landlord or agent of the landlord or by an occupant of the same building because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, marital status, family status, handicap or the receipt of public assistance.  |
| Contracts   | 3. Every person having legal capacity has a right to contract on equal terms without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.  |
| Employment  | 4.—(1) Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, record of offences, marital status, family status or handicap.   |
| Harassment<br>in<br>employment  | (2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or handicap.   |
| Vocational<br>associations  | 5. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, marital status, family status or handicap.  |
| Harassment<br>because of<br>sex in<br>accommodation                               | 6.—(1) Every person who occupies accommodation has a right to freedom from harassment because of sex by the landlord or agent of the landlord or by an occupant of the same building.  |
| Harassment<br>because of<br>sex in<br>workplaces                                  | (2) Every person who is an employee has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.   |
| Sexual<br>solicitation<br>by a person<br>in position<br>to confer<br>benefit, etc | <p>(3) Every person has a right to be free from,</p> <p>(a) a sexual solicitation or advance made by a person in a position to confer, grant or deny a benefit or advancement to the person where the person making the solicitation or advance knows or ought reasonably to know that it is unwelcome; or</p> <p>(b) a reprisal or a threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is</p> |

## CODE DES DROITS DE LA PERSONNE

race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial, l'état d'assisté social ou une infirmité.

(2) L'occupant d'un logement a le droit de vivre sans être harcelé par le propriétaire ou son représentant ou un occupant du même immeuble pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'état matrimonial, l'état familial, l'état d'assisté social ou une infirmité. 1981, chap. 53, art. 2.

Harcèlement chez soi

3 La personne pourvue de capacité juridique a le droit de passer un contrat à titre de partenaire égal, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 3.

Contrat

4 (1) La personne a droit à un traitement égal en matière d'un emploi, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou une infirmité.

Emploi

(2) L'employé a le droit de travailler sans être harcelé au travail par son employeur ou son représentant ou un autre employé pour des raisons fondées sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, l'âge, l'existence d'un casier judiciaire, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 4.

Harcèlement au travail

5 La personne a droit à un traitement égal en matière d'adhésion à un syndicat ou à une association commerciale ou professionnelle ou en matière d'exercice d'une profession autonome, sans discrimination fondée sur la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la citoyenneté, la croyance, le sexe, l'âge, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 5.

Association professionnelle

6 (1) L'occupant d'un logement a le droit de vivre sans être harcelé par le propriétaire ou son représentant ou un occupant du même immeuble pour des raisons fondées sur le sexe.

Harcèlement sexuel chez soi

(2) L'employé a le droit de travailler sans être harcelé à son travail par son employeur ou son représentant ou un autre employé pour des raisons fondées sur le sexe.

Harcèlement sexuel au travail

(3) La personne a le droit d'être à l'abri :

Avances sexuelles par une personne apte à accorder un avantage, etc.

## HUMAN RIGHTS CODE

made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person.

## Reprisals

7. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

## Infringement prohibited

8. No person shall infringe or do, directly or indirectly, anything that infringes a right under this Part.

## PART II

## INTERPRETATION AND APPLICATION

## Interpretation

9. In Part I and in this Part,

(a) "age" means an age that is eighteen years or more, except in subsection 4 (1) where "age" means an age that is eighteen years or more and less than sixty-five years;

(b) "because of handicap" means for the reason that the person has or has had, or is believed to have or have had,

(i) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a dog guide or on a wheelchair or other remedial appliance or device,

(ii) a condition of mental retardation or impairment,

(iii) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, or

(iv) a mental disorder;

(c) "equal" means subject to all requirements, qualifications and considerations that are not a prohibited ground of discrimination;



## CODE DES DROITS DE LA PERSONNE

- a) d'avances sexuelles provenant d'une personne apte à lui accorder ou à lui refuser un avantage ou une promotion lorsque la personne qui fait les avances sait ou devrait normalement savoir que celles-ci sont importunes;
- b) de représailles ou de menaces de représailles pour avoir refusé d'accéder à des avances sexuelles lorsque ces représailles ou menaces proviennent d'une personne apte à lui accorder ou à lui refuser un avantage ou une promotion. 1981, chap. 53, art. 6.

**7** La personne a le droit de revendiquer et de faire respecter les droits qui lui sont reconnus par la présente loi, d'introduire des instances aux termes de la présente loi et d'y participer, et de refuser d'enfreindre un droit reconnu à une autre personne par la présente loi sans représailles ou menaces de représailles. 1981, chap. 53, art. 7.

Représailles

**8** Il est interdit d'enfreindre un droit reconnu par la présente partie ou de causer, directement ou indirectement, l'infraction d'un tel droit. 1981, chap. 53, art. 8.

Interdiction d'enfreindre un droit

## DEUXIÈME PARTIE

## DÉFINITIONS ET CHAMP D'APPLICATION

**9** Les définitions qui suivent s'appliquent à la première et à la présente parties.

Définitions

«à cause d'une infirmité» Fondée sur l'existence présumée ou réelle, actuelle ou antérieure :

- (i) d'une incapacité physique, d'une infirmité, d'une malformation ou d'un défigurement dû à une lésion corporelle, une anomalie congénitale ou une maladie, notamment le diabète sucré, l'épilepsie, la paralysie, l'amputation, l'incoordination motrice, la cécité ou une déficience visuelle, la surdité ou une déficience auditive, la mutité ou un trouble de la parole, ou la nécessité de recourir à un chien d'aveugle, à un fauteuil roulant ou à un appareil orthopédique,
- (ii) d'un état de déficience mentale ou d'affaiblissement intellectuel,
- (iii) d'une difficulté d'apprentissage ou d'un dysfonctionnement d'un ou de plusieurs des processus



## HUMAN RIGHTS CODE

- (d) "family status" means the status of being in a parent and child relationship;
- (e) "group insurance" means insurance whereby the lives or well-being or the lives and well-being of a number of persons are insured severally under a single contract between an insurer and an association or an employer or other person;
- (f) "harassment" means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome;
- (g) "marital status" means the status of being married, single, widowed, divorced or separated and includes the status of living with a person of the opposite sex in a conjugal relationship outside marriage;
- (h) "record of offences" means a conviction for,
  - (i) an offence in respect of which a pardon has been granted under the *Criminal Records Act* (Canada) and has not been revoked, or
  - (ii) an offence in respect of any provincial enactment;
- (i) "services" does not include a levy, fee, tax or periodic payment imposed by law;
- (j) "spouse" means the person to whom a person of the opposite sex is married or with whom the person is living in a conjugal relationship outside marriage.

R.S.C. 1970,  
c. 12  
(1st Supp.)

Constructive  
discrimina-  
tion

**10.** A right of a person under Part I is infringed where a requirement, qualification or consideration is imposed that is not discrimination on a prohibited ground but that would result in the exclusion, qualification or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or consideration is a reasonable and *bona fide* one in the circumstances; or
- (b) it is declared in this Act that to discriminate because of such ground is not an infringement of a right.

Discrimin-  
ation  
because of  
association

**11.** A right under Part I is infringed where the discrimination is because of relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination.

## CODE DES DROITS DE LA PERSONNE

relatifs à la compréhension ou à l'utilisation de symboles ou de la langue parlée,

(iv) d'un trouble mental.

«âge» Dix-huit ans ou plus. Toutefois, pour l'application du paragraphe 4 (1), «âge» signifie dix-huit ans ou plus et moins de soixante-cinq ans.

«assurance-groupe» Contrat d'assurance visant à assurer la vie ou le bien-être de plusieurs personnes au moyen d'une seule police d'assurance entre un assureur et une association, un employeur ou une autre personne.

«casier judiciaire» Relevé d'une condamnation pour :

(i) une infraction qui a fait l'objet d'un pardon conformément à la *Loi sur le casier judiciaire* (Canada) et qui n'a pas été révoqué,

S.R.C. 1970,  
chap. 12 (1<sup>er</sup>  
supp.)

(ii) une infraction à une loi provinciale.

«conjoint» Personne avec laquelle une personne du sexe opposé est mariée ou avec laquelle elle cohabite dans une union conjugale hors des liens du mariage.

«égal» S'entend, sous réserve d'une exigence, notamment de qualité requise, qui ne constitue pas un motif de discrimination illicite.

«état familial» Le fait de se trouver dans une relation parent-enfant.

«état matrimonial» Le fait d'être marié, célibataire, veuf, divorcé ou séparé. La présente définition inclut le fait de vivre avec une personne du sexe opposé dans une union conjugale hors des liens du mariage.

«harcèlement» Le fait pour une personne de s'adonner à des remarques ou à des gestes vexatoires lorsqu'elle sait ou devrait normalement savoir que ces remarques ou ces gestes sont importuns.

«service» La présente définition n'inclut pas un impôt, un droit, une taxe ni un paiement périodique imposé par une loi. 1981, chap. 53, art. 9.

**10** Constitue une atteinte à un droit reconnu dans la première partie le fait d'imposer une exigence, notamment de qualité requise, qui n'est pas un motif de discrimination illicite mais

Discrimination  
indirecte

## HUMAN RIGHTS CODE

Announced intention to discriminate	12.—(1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I.
Opinion	(2) Subsection (1) shall not interfere with freedom of expression of opinion.
Special programs	13.—(1) A right under Part I is not infringed by the implementation of a special program designed to relieve hardship or economic disadvantage or to assist disadvantaged persons or groups to achieve or attempt to achieve equal opportunity or that is likely to contribute to the elimination of the infringement of rights under Part I.
Review by Commission	<p>(2) The Commission may,</p> <ul style="list-style-type: none"> <li>(a) upon its own initiative;</li> <li>(b) upon application by a person seeking to implement a special program under the protection of subsection (1); or</li> <li>(c) upon a complaint in respect of which the protection of subsection (1) is claimed,</li> </ul> <p>inquire into the special program and, in the discretion of the Commission, may by order declare,</p> <ul style="list-style-type: none"> <li>(d) that the special program, as defined in the order, does not satisfy the requirements of subsection (1); or</li> <li>(e) that the special program as defined in the order, with such modifications, if any, as the Commission considers advisable, satisfies the requirements of subsection (1).</li> </ul>
Reconsidera- tion	(3) A person aggrieved by the making of an order under subsection (2) may request the Commission to reconsider its order and section 36, with necessary modifications, applies.
Effect of order	(4) Subsection (1) does not apply to a special program where an order is made under clause (2) (d) or where an order is made under clause (2) (e) with modifications of the special program that are not implemented.
Subs. (2) does not apply to Crown	(5) Subsection (2) does not apply to a special program implemented by the Crown or an agency of the Crown.



## CODE DES DROITS DE LA PERSONNE

qui a pour résultat d'exclure un groupe de personnes défini par un motif de discrimination illicite ou de reconnaître une qualité ou d'accorder une préférence à un groupe de ce genre dont fait partie la personne lésée, sauf :

- a) si l'exigence est normale compte tenu des circonstances;
- b) si la présente loi stipule que la pratique d'un acte discriminatoire en raison d'un tel motif n'enfreint pas un droit. 1981, chap. 53, art. 10.

**11** Constitue une atteinte à un droit reconnu dans la première partie le fait d'exercer une discrimination fondée sur un rapport, une association ou un lien avec une personne ou un groupe de personnes définies par un motif de discrimination illicite. 1981, chap. 53, art. 11.

Discrimination pour des raisons fondées sur l'association

**12 (1)** Constitue une atteinte à un droit reconnu dans la première partie le fait de publier ou d'exposer ou de faire publier ou exposer en public un avis, un signe, un symbole, un emblème ou une autre représentation qui indique l'intention d'enfreindre un tel droit ou qui a pour objet de favoriser une telle infraction.

Intention publique d'enfreindre un droit

**(2)** Le paragraphe (1) ne porte pas atteinte à la libre expression d'opinions. 1981, chap. 53, art. 12.

Opinion

**13 (1)** Ne constitue pas une atteinte à un droit reconnu dans la première partie la mise en oeuvre d'un programme spécial destiné à alléger les épreuves d'une personne ou d'un groupe de personnes défavorisées, à diminuer leurs désavantages économiques, à les aider à jouir ou à essayer de jouir de chances égales ou à favoriser vraisemblablement l'élimination d'une atteinte à des droits reconnus dans la première partie.

Programme spécial

**(2)** La Commission peut :

Examen par la Commission

- a) d'office;
- b) à la demande d'une personne qui cherche à mettre en oeuvre un programme spécial sous la tutelle du paragraphe (1);
- c) à la réception d'une plainte contre laquelle l'intimé invoque la protection prévue au paragraphe (1),

faire enquête sur le programme spécial et, si elle le juge à propos, donner une directive où elle déclare que :



## HUMAN RIGHTS CODE

- Age  
sixty-five  
or over      **14.** A right under Part I to non-discrimination because of age is not infringed where an age of sixty-five years or over is a requirement, qualification or consideration for preferential treatment.
- Canadian  
Citizen-  
ship      **15.—(1)** A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship is a requirement, qualification or consideration imposed or authorized by law.
- Idem      (2) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or lawful admission to Canada for permanent residence is a requirement, qualification or consideration adopted for the purpose of fostering and developing participation in cultural, educational, trade union or athletic activities by Canadian citizens or persons lawfully admitted to Canada for permanent residence.
- Idem      (3) A right under Part I to non-discrimination because of citizenship is not infringed where Canadian citizenship or domicile in Canada with the intention to obtain Canadian citizenship is a requirement, qualification or consideration adopted by an organization or enterprise for the holder of chief or senior executive positions.
- Handicap      **16.—(1)** A right of a person under this Act is not infringed for the reason only,
- (a) that the person does not have access to premises, services, goods, facilities or accommodation because of handicap, or that the premises, services, goods, facilities or accommodation lack the amenities that are appropriate for the person because of handicap; or
  - (b) that the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right because of handicap.
- Powers of  
Commission      (2) Where, after the investigation of a complaint, the Commission determines that the evidence does not warrant the appointment of a board of inquiry because of the application of subsection (1), the Commission may nevertheless use its best endeavours to effect a settlement as to the provision of access or amenities or as to the duties or requirements.
- Special  
interest  
organi-  
zations      **17.** The rights under Part I to equal treatment with respect to services and facilities, with or without accommodation, is not infringed where membership or participation in a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by a prohibited ground of discrimination is restricted to persons who are similarly identified.

## CODE DES DROITS DE LA PERSONNE

- d) le programme spécial, tel qu'il est précisé dans la directive, ne satisfait pas aux exigences du paragraphe (1);
- e) le programme spécial, tel qu'il est précisé dans la directive, avec les modifications, s'il en est, que la Commission juge opportunes, satisfait aux exigences du paragraphe (1).

(3) La personne qui se sent lésée par une directive rendue en vertu du paragraphe (2) peut demander à la Commission de réexaminer sa directive. Dans ce cas, l'article 36 s'applique avec les modifications nécessaires.

Réexamen

(4) Le paragraphe (1) ne s'applique pas à un programme spécial lorsqu'une directive est donnée en vertu des alinéas (2) d) ou e) et que les modifications relatives au programme spécial ne sont pas effectuées.

Application de la directive

(5) Le paragraphe (2) ne s'applique pas à un programme spécial mis en œuvre par la Couronne ou un de ses organismes. 1981, chap. 53, art. 13.

Le paragraphe (2) ne s'applique pas à la Couronne

14 Ne constitue pas une atteinte au droit, reconnu dans la première partie, de traitement égal en matière d'âge le fait d'exiger, dans le but d'accorder un traitement préférentiel, l'âge de soixante-cinq ans ou plus. 1981, chap. 53, art. 14.

Soixante-cinq ans ou plus

15 (1) Ne constitue pas une atteinte au droit, reconnu dans la première partie, de traitement égal en matière de citoyenneté le fait d'exiger la citoyenneté canadienne lorsque la loi impose ou autorise une telle exigence.

Citoyenneté canadienne

(2) Ne constitue pas une atteinte au droit, reconnu dans la première partie, de traitement égal en matière de citoyenneté le fait d'exiger la citoyenneté canadienne ou l'admission régulière au pays à titre de résident permanent afin de favoriser la participation de Canadiens ou de personnes régulièrement admises au pays à titre de résidents permanents à des activités culturelles, éducatives, syndicales ou sportives.

Idem

(3) Ne constitue pas une atteinte au droit, reconnu dans la première partie, de traitement égal en matière de citoyenneté le fait qu'un organisme ou une entreprise exige, à un poste d'administrateur en chef ou de cadre supérieur, la citoyenneté canadienne ou la résidence au Canada avec l'intention d'adopter la citoyenneté canadienne. 1981, chap. 53, art. 15.

Idem

16 (1) Ne constitue pas une atteinte à un droit reconnu dans la présente loi le simple fait qu'une personne :

Infirmité



## HUMAN RIGHTS CODE

Separate  
school rights  
preserved  
1867, c. 3

R.S.O. 1980,  
c. 129

Duties of  
teachers

Restriction  
of facilities  
by sex

Athletic  
activities

Recreational  
clubs

Shared  
accommo-  
dation

Restrictions  
on accommo-  
dation, sex

Idem:  
marital  
status

Idem:  
family  
status

18.—(1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under *The British North America Act, 1867* and the *Education Act*.

(2) This Act does not apply to affect the application of the *Education Act* with respect to the duties of teachers.

19.—(1) The right under section 1 to equal treatment with respect to services and facilities without discrimination because of sex is not infringed where the use of the services or facilities is restricted to persons of the same sex on the ground of public decency.

(2) The right under section 1 to equal treatment with respect to services and facilities is not infringed where membership in an athletic organization or participation in an athletic activity is restricted to persons of the same sex.

(3) The right under section 1 to equal treatment with respect to services and facilities is not infringed where a recreational club restricts or qualifies access to its services or facilities or gives preferences with respect to membership dues and other fees because of age, sex, marital status or family status.

20.—(1) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination is not infringed by discrimination where the residential accommodation is in a dwelling in which the owner or his or her family reside if the occupant or occupants of the residential accommodation are required to share a bathroom or kitchen facility with the owner or family of the owner.

(2) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of sex is not infringed by discrimination on that ground where the occupancy of all the residential accommodation in the building, other than the accommodation, if any, of the owner or family of the owner, is restricted to persons who are of the same sex.

(3) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of marital status is not infringed by discrimination on that ground where the occupancy is in a building that contains not more than four dwelling units, one of which is occupied by the owner or family of the owner.

(4) The right under section 2 to equal treatment with respect to the occupancy of residential accommodation without discrimination because of family status is not infringed by discrimination on that ground where the residential accommodation is in

## CODE DES DROITS DE LA PERSONNE

- a) n'a pas accès à un lieu, un logement, une installation, un service ou un bien à cause d'une infirmité ou n'y trouve pas les commodités propres à un handicapé;
- b) ne peut, en raison d'une infirmité, s'acquitter de ses fonctions principales ni satisfaire aux exigences inhérentes à l'exercice d'un droit.

(2) Si, après l'étude d'une plainte, la Commission décide que les preuves ne justifient pas la constitution d'une commission d'enquête en raison de l'application du paragraphe (1), elle peut néanmoins s'efforcer d'en arriver à un règlement relativement à l'accessibilité, aux commodités, aux fonctions ou exigences. 1981, chap. 53, art. 16.

Pouvoirs de la  
Commission

**17** Ne constitue pas une atteinte à un droit, reconnu dans la première partie, de traitement égal en matière de services et d'installations, avec ou sans logement, le fait qu'un organisme ou groupement religieux, philanthropique, éducatif, social ou d'entraide dont le principal objectif est de servir les intérêts de personnes définies par un motif de discrimination illicite, n'accepte que ces personnes comme membres. 1981, chap. 53, art. 17.

Groupement  
sélectif

**18 (1)** La présente loi ne doit pas être interprétée comme portant atteinte à un droit ni à un privilège concernant les écoles séparées que possèdent les conseils d'écoles séparées ou leurs contribuables conformément à l'*Acte de l'Amérique du Nord britannique, 1867\** et à la *Loi sur l'éducation*.

Maintien des  
droits des écoles  
séparées

1867, chap. 3  
L.R.O. 1980,  
chap. 129

(2) La présente loi ne porte pas atteinte à l'application de la *Loi sur l'éducation* en ce qui concerne les fonctions des enseignants. 1981, chap. 53, art. 18.

Fonctions des  
enseignants

**19 (1)** Ne constitue pas une atteinte au droit, reconnu à l'article 1, de traitement égal en matière de services et d'installations le fait de restreindre ces services et installations à des personnes du même sexe pour des raisons de décence.

Utilisation res-  
treinte d'installa-  
tions pour des rai-  
sons fondées sur  
le sexe

(2) Ne constitue pas une atteinte au droit, reconnu à l'article 1, de traitement égal en matière de services et d'installations le fait de restreindre l'adhésion à un organisme sportif ou la participation à une activité sportive à des personnes du même sexe.

Activités sportives

(3) Ne constitue pas une atteinte au droit, reconnu à l'article 1, de traitement égal en matière de services et d'installations le fait qu'un club de loisirs limite l'accès à ces services et installations ou accorde une préférence en ce qui concerne les cotisations des membres ou autres droits pour des raisons fondées sur

Clubs de loisirs



## HUMAN RIGHTS CODE

a building, or designated part of the building, that contains more than one dwelling unit served by a common entrance and the occupancy of all the residential accommodation in the building or in the designated part of the building is restricted because of family status.

Restrictions  
for insurance  
contracts, etc

**21.** The right under sections 1 and 3 to equal treatment with respect to services and to contract on equal terms, without discrimination because of age, sex, marital status, family status or handicap, is not infringed where a contract of automobile, life, accident or sickness or disability insurance or a contract of group insurance between an insurer and an association or person other than an employer, or a life annuity, differentiates or makes a distinction, exclusion or preference on reasonable and *bona fide* grounds because of age, sex, marital status, family status or handicap.

Discriminatory  
employment  
advertising

**22.—(1)** The right under section 4 to equal treatment with respect to employment is infringed where an invitation to apply for employment or an advertisement in connection with employment is published or displayed that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

Application  
for  
employment

**(2)** The right under section 4 to equal treatment with respect to employment is infringed where a form of application for employment is used or a written or oral inquiry is made of an applicant that directly or indirectly classifies or indicates qualifications by a prohibited ground of discrimination.

Questions at  
interview

**(3)** Nothing in subsection (2) precludes the asking of questions at a personal employment interview concerning a prohibited ground of discrimination where discrimination on such ground is permitted under this Act.

Employment  
agencies

**(4)** The right under section 4 to equal treatment with respect to employment is infringed where an employment agency discriminates against a person because of a prohibited ground of discrimination in receiving, classifying, disposing of or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or agent of an employer.

Special  
employment

**23.** The right under section 4 to equal treatment with respect to employment is not infringed where,

- (a) a religious, philanthropic, educational, fraternal or social institution or organization that is primarily engaged in serving the interests of persons identified by their race, ancestry, place of origin, colour, ethnic origin, creed, sex, age, marital status or handicap employs only, or gives preference in employment to, persons similarly identified if the qualification is a

## CODE DES DROITS DE LA PERSONNE

l'âge, le sexe, l'état matrimonial ou familial. 1981, chap. 53, art. 19.

**20 (1)** Ne constitue pas une atteinte au droit, reconnu à l'article 2, de traitement égal en matière d'occupation d'un logement le fait qu'un propriétaire impose à un locataire qui habite la même maison que la sienne ou celle de sa famille de partager la même salle de bains ou la même cuisine que la sienne ou celle de sa famille.

Utilisation commune d'une cuisine, etc.

**(2)** Ne constitue pas une atteinte au droit, reconnu à l'article 2, de traitement égal en matière d'occupation d'un logement le fait qu'un propriétaire ne loue un logement autre que celui qu'il occupe ou que sa famille occupe qu'à des personnes du même sexe.

Logement et discrimination sexuelle

**(3)** Ne constitue pas une atteinte au droit, reconnu à l'article 2, de traitement égal en matière d'occupation d'un logement le fait que le propriétaire d'un immeuble d'au plus quatre logements occupe, lui-même ou sa famille, l'un de ces logements pour des raisons fondées sur l'état matrimonial.

Idem : état matrimonial

**(4)** Ne constitue pas une atteinte au droit, reconnu à l'article 2, de traitement égal en matière d'occupation d'un logement le fait que le propriétaire d'un immeuble ou d'une partie désignée d'un immeuble de plus d'un logement et à entrée commune limite la location de ces logements pour des raisons fondées sur l'état familial. 1981, chap. 53, art. 20.

Idem : état familial

**21** Ne constitue pas une atteinte au droit, reconnu aux articles 1 et 3, de traitement égal en matière de services et de contrats le fait qu'un contrat d'assurance-automobile, d'assurance-vie, d'assurance-accident, d'assurance-maladie ou d'assurance-invalidité, qu'un contrat d'assurance-groupe entre un assureur et une association ou une personne autre qu'un employeur, ou qu'une rente viagère établissent des distinctions entre des personnes, les excluent ou leur accordent une préférence pour des motifs sérieux fondés sur l'âge, le sexe, l'état matrimonial, l'état familial ou une infirmité. 1981, chap. 53, art. 21.

Contrats d'assurance, etc.

**22 (1)** Constitue une atteinte au droit, reconnu à l'article 4, de traitement égal en matière d'emploi le fait d'inciter une personne à demander un emploi ou de publier ou afficher une offre d'emploi qui indique des catégories d'emploi ou des qualités requises inspirées, directement ou indirectement, par un motif de discrimination illicite.

Publicité relative à l'emploi

**(2)** Constitue une atteinte au droit, reconnu à l'article 4, de traitement égal en matière d'emploi le fait d'utiliser une formule de demande d'emploi ou de procéder, oralement ou par

Demande d'emploi



## HUMAN RIGHTS CODE

reasonable and *bona fide* qualification because of the nature of the employment;

- (b) the discrimination in employment is for reasons of age, sex, record of offences or marital status if the age, sex, record of offences or marital status of the applicant is a reasonable and *bona fide* qualification because of the nature of the employment;
- (c) an individual person refuses to employ another for reasons of any prohibited ground of discrimination in section 4, where the primary duty of the employment is attending to the medical or personal needs of the person or of an ill child or an aged, infirm or ill spouse or other relative of the person; or
- (d) an employer grants or withholds employment or advancement in employment to a person who is the spouse, child or parent of the employer or an employee.

Employment  
conditional on  
membership in  
pension plan

24.—(1) The right under section 4 to equal treatment with respect to employment is infringed where employment is denied or made conditional because a term or condition of employment requires enrolment in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer, that makes a distinction, preference or exclusion on a prohibited ground of discrimination.

Pension or  
disability  
plan under  
R.S.O. 1980,  
c. 137

(2) The right under section 4 to equal treatment with respect to employment without discrimination because of age, sex, marital status or family status is not infringed by an employee superannuation or pension plan or fund or a contract of group insurance between an insurer and an employer that complies with the *Employment Standards Act* and the regulations thereunder.

Employee  
disability  
and pension  
plans:  
handicap

(3) The right under section 4 to equal treatment with respect to employment without discrimination because of handicap is not infringed,

- (a) where a reasonable and *bona fide* distinction, exclusion or preference is made in an employee disability or life insurance plan or benefit because of a pre-existing handicap that substantially increases the risk;
- (b) where a reasonable and *bona fide* distinction, exclusion or preference is made on the ground of a pre-existing handicap in respect of an employee-pay-all or participant-pay-all benefit in an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and an employer or in respect of a plan, fund or policy that is offered by an

## CODE DES DROITS DE LA PERSONNE

écrit, à une enquête sur un candidat qui indique des catégories d'emploi ou des qualités requises inspirées, directement ou indirectement, par un motif de discrimination illicite.

(3) Le paragraphe (2) n'interdit pas, lors d'une entrevue privée relative à un emploi, de poser des questions inspirées par un motif de discrimination illicite lorsqu'un acte discriminatoire fondé sur cette raison est permis aux termes de la présente loi.

Entrevue

(4) Constitue une atteinte au droit, reconnu à l'article 4, de traitement égal en matière d'emploi le fait qu'une agence de placement exerce une discrimination illicite lorsqu'elle reçoit, classe ou traite de quelque autre façon les demandes qui lui parviennent relativement à ses services ou lorsqu'elle met en rapport un ou des candidats avec un employeur ou le représentant d'un employeur. 1981, chap. 53, art. 22.

Agence de placement

**23** Ne constitue pas une atteinte au droit, reconnu à l'article 4, de traitement égal en matière d'emploi le fait :

Emploi particulier

- a) qu'un organisme ou groupement religieux, philanthropique, éducatif, social ou d'entraide dont le principal objectif est de servir les intérêts de personnes liées par la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique, la croyance, le sexe, l'âge, l'état matrimonial ou une infirmité, n'emploie que des personnes ainsi associées ou leur accorde une préférence si cette qualité est véritablement requise compte tenu de la nature de l'emploi;
- b) qu'un employeur accorde ou refuse un emploi pour des raisons fondées sur l'âge, le sexe, un casier judiciaire ou l'état matrimonial, si cette qualité est véritablement requise compte tenu de la nature de l'emploi;
- c) qu'un particulier refuse d'employer une personne pour des raisons fondées sur un motif de discrimination illicite précisé à l'article 4 si le but principal de l'emploi est de dispenser des soins médicaux ou personnels ou d'en dispenser à un de ses enfants malade, à son conjoint âgé, infirme ou malade ou à un de ses parents;
- d) qu'un employeur accorde ou refuse un emploi ou une promotion à une personne qui est son conjoint, son enfant ou son père ou sa mère ou à une personne qui est le conjoint, l'enfant ou le père ou la mère d'un employé. 1981, chap. 53, art. 23.

**24** (1) Constitue une atteinte au droit, reconnu à l'article 4, de traitement égal en matière d'emploi le fait de refuser un em-

Emploi soumis à l'adhésion à un régime de retraite



## HUMAN RIGHTS CODE

employer to his employees if they are fewer than twenty-five in number.

Compensation (4) An employer shall pay to an employee who is excluded because of a handicap from an employee benefit, pension or superannuation plan or fund or a contract of group insurance between an insurer and the employer compensation equivalent to the contribution that the employer would make thereto on behalf of an employee who does not have a handicap.

Discrimination in employment under government contracts 25.—(1) It shall be deemed to be a condition of every contract entered into by or on behalf of the Crown or any agency thereof and of every subcontract entered into in the performance thereof that no right under section 4 will be infringed in the course of performing the contract.

Idem government grants and loans (2) It shall be deemed to be a condition of every grant, contribution, loan or guarantee made by or on behalf of the Crown or any agency thereof that no right under section 4 will be infringed in the course of carrying out the purposes for which the grant, contribution, loan or guarantee was made.

Sanction (3) Where an infringement of a right under section 4 is found by a board of inquiry upon a complaint and constitutes a breach of a condition under this section, the breach of condition is sufficient grounds for cancellation of the contract, grant, contribution, loan or guarantee and refusal to enter into any further contract with or make any further grant, contribution, loan or guarantee to the same person.

## PART III

## THE ONTARIO HUMAN RIGHTS COMMISSION

Commission continued 26.—(1) The Ontario Human Rights Commission is continued and shall be composed of such persons, being not fewer than seven, as are appointed by the Lieutenant Governor in Council.

Responsible to Minister (2) The Commission is responsible to the Minister for the administration of this Act.

Chairman (3) The Lieutenant Governor in Council shall designate a member of the Commission as chairman, and a member as vice-chairman.

Remuneration (4) The Lieutenant Governor in Council may fix the remuneration and allowance for expenses of the chairman, vice-chairman and members of the Commission.

Staff  
R.S.O. 1980  
c. 418 (5) The employees of the Commission shall be appointed under the *Public Service Act*.

## CODE DES DROITS DE LA PERSONNE

ploi ou d'y apporter certaines restrictions parce qu'une condition d'emploi exige la participation de l'employé à un régime d'avantages sociaux, à une caisse ou un régime de retraite, ou à un contrat d'assurance-groupe entre un assureur et un employeur qui établit une distinction entre des personnes, les exclut ou accorde une préférence pour des raisons fondées sur un motif de discrimination illicite.

(2) Ne constitue pas une atteinte au droit, reconnu à l'article 4, de traitement égal en matière d'emploi le fait qu'un régime ou une caisse de retraite à l'intention des employés ou qu'un contrat d'assurance-groupe entre un assureur et un employeur exerce une discrimination en matière d'âge, de sexe, d'état matrimonial ou familial en conformité avec la *Loi sur les normes d'emploi* et les règlements pris en application de cette loi.

Régime de retraite, etc. établi en vertu du chap. 137 des L.R.O. de 1980

(3) Ne constitue pas une atteinte au droit, reconnu à l'article 4, de traitement égal en matière d'emploi le fait :

Régime d'assurance-invalidité en cas d'infirmité déjà existante

a) qu'une distinction, une exclusion ou une préférence est pratiquée de bonne foi dans un régime d'assurance-invalidité ou d'assurance-vie à l'intention des employés ou dans une prestation consentie aux termes de ces régimes parce qu'une infirmité déjà existante augmente considérablement les risques rattachés à l'emploi;

b) qu'une distinction, une exclusion ou une préférence est pratiquée de bonne foi à cause d'une infirmité déjà existante en ce qui concerne une prestation consentie dans le cadre d'un programme où l'employé ou le participant paie toutes les cotisations d'un régime d'avantages sociaux, d'un régime ou d'une caisse de retraite ou d'un contrat d'assurance-groupe entre un assureur et un employeur, ou en ce qui concerne un régime, une caisse ou une police qu'un employeur offre à ses employés lorsque leur nombre est inférieur à vingt-cinq.

(4) L'employeur verse à un employé exclu d'un régime d'avantages sociaux, d'un régime ou d'une caisse de retraite ou d'un contrat d'assurance-groupe entre un assureur et l'employeur à cause d'une infirmité une indemnité compensatrice équivalente à l'apport de l'employeur à ce régime, à cette caisse ou à ce contrat pour un employé qui n'est pas atteint d'infirmité. 1981, chap. 53, art. 24.

Indemnité compensatrice

25 (1) La stipulation qu'aucun droit reconnu à l'article 4 ne doit être enfreint lors de l'exécution d'un contrat est réputée une condition d'un contrat passé par la Couronne ou en son nom ou par un de ses organismes ou au nom de celui-ci et d'un

Discrimination en matière d'emploi et contrats du gouvernement

## HUMAN RIGHTS CODE

Divisions	(6) The Commission may authorize any function of the Commission to be performed by a division of the Commission composed of at least three members of the Commission.
Race relations division	27.—(1) The Lieutenant Governor in Council shall designate at least three members of the Commission to constitute a race relations division of the Commission and shall designate one member of the race relations division as Commissioner for Race Relations.
Functions	(2) It is the function of the race relations division of the Commission to perform any of the functions of the Commission under clause 28 (f), (g) or (h) relating to race, ancestry, place of origin, colour, ethnic origin or creed that are referred to it by the Commission and any other function referred to it by the Commission.
Function of Commission	<p>28. It is the function of the Commission,</p> <ul style="list-style-type: none"> <li>(a) to forward the policy that the dignity and worth of every person be recognized and that equal rights and opportunities be provided without discrimination that is contrary to law;</li> <li>(b) to promote an understanding and acceptance of and compliance with this Act;</li> <li>(c) to recommend for consideration a special plan or program designed to meet the requirements of subsection 13 (1), subject to the right of a person aggrieved by the implementation of the plan or program to request the Commission to reconsider its recommendation and section 36 applies with necessary modifications;</li> <li>(d) to develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that infringe rights under this Act;</li> <li>(e) to examine and review any statute or regulation, and any program or policy made by or under a statute and make recommendations on any provision, program or policy, that in its opinion is inconsistent with the intent of this Act;</li> <li>(f) to inquire into incidents of and conditions leading or tending to lead to tension or conflict based upon identification by a prohibited ground of discrimination and take appropriate action to eliminate the source of tension or conflict;</li> </ul>



CODE DES DROITS DE LA PERSONNE

contrat de sous-traitance accordé dans l'exécution du contrat principal.

(2) La stipulation qu'aucun droit reconnu à l'article 4 ne doit être enfreint lors de la poursuite des fins pour lesquelles une garantie, une subvention ou une aide financière a été donnée ou un prêt a été consenti est réputée une condition d'une garantie, d'une subvention ou d'une aide financière donnée ou d'un prêt consenti par la Couronne ou en son nom ou par un de ses organismes.

Idem : subven-  
tions et prêts du  
gouvernement

(3) Lorsque, sur réception d'une plainte, une commission d'enquête juge qu'une atteinte à un droit reconnu à l'article 4 est une infraction à une condition énoncée au présent article, cette infraction constitue un motif suffisant pour résilier le contrat ou mettre fin à la garantie, à la subvention ou à l'aide financière donnée ou au prêt consenti et pour refuser de passer un autre contrat avec la même personne ou de lui redonner une garantie, subvention ou une aide financière ou de lui consentir un autre prêt. 1981, chap. 53, art. 25.

Sanction

TROISIÈME PARTIE

COMMISSION ONTARIENNE DES DROITS DE LA PERSONNE

**26** (1) La Commission ontarienne des droits de la personne demeure en fonctions et se compose d'au moins sept personnes nommées par le lieutenant-gouverneur en conseil.

Maintien de la  
Commission

(2) La Commission rend compte au ministre de l'application de la présente loi.

Ministre

(3) Le lieutenant-gouverneur en conseil désigne un des membres de la Commission à la présidence et un autre à la vice-présidence.

Président

(4) Le lieutenant-gouverneur en conseil peut fixer la rémunération et les indemnités du président, du vice-président et des membres de la Commission.

Rémunération

(5) Les employés de la Commission sont nommés conformément à la *Loi sur la fonction publique*\*.

Personnel  
L. R.O. 1980,  
chap. 418

(6) La Commission peut autoriser une de ses sections, composée d'au moins trois membres, à exercer une des fonctions de la Commission. 1981, chap. 53, art. 26.

Sections



## HUMAN RIGHTS CODE

- (g) to initiate investigations into problems based upon identification by a prohibited ground of discrimination that may arise in a community, and encourage and co-ordinate plans, programs and activities to reduce or prevent such problems;
- (h) to promote, assist and encourage public, municipal or private agencies, organizations, groups or persons to engage in programs to alleviate tensions and conflicts based upon identification by a prohibited ground of discrimination;
- (i) to enforce this Act and orders of boards of inquiry; and
- (j) to perform the functions assigned to it by this or any other Act.

Evidence  
obtained  
in course of  
investigation

**29.—**(1) No person who is a member of the Commission shall be required to give testimony in a civil suit or any proceeding as to information obtained in the course of an investigation under this Act.

Idem

(2) No person who is employed in the administration of this Act shall be required to give testimony in a civil suit or any proceeding other than a proceeding under this Act as to information obtained in the course of an investigation under this Act.

Annual  
report

**30.—**(1) The Commission shall make a report to the Minister not later than the 30th day of June in each year upon the affairs of the Commission during the year ending on the 31st day of March of that year.

Idem

(2) The Minister shall submit the report to the Lieutenant Governor in Council who shall cause the report to be laid before the Assembly if it is in session, or, if not, at the next ensuing session.

## PART IV

## ENFORCEMENT

Complaints

**31.—**(1) Where a person believes that a right of his under this Act has been infringed, the person may file with the Commission a complaint in a form approved by the Commission.

Idem

(2) The Commission may initiate a complaint by itself or at the request of any person.

## CODE DES DROITS DE LA PERSONNE

**27 (1)** Le lieutenant-gouverneur en conseil désigne au moins trois membres de la Commission pour constituer, au sein de la Commission, une section des rapports entre les races et désigne un de ces membres à titre de commissaire aux rapports entre les races.

Section des  
rapports entre les  
races

**(2)** La section des rapports entre les races de la Commission a pour mission d'exécuter l'une ou l'autre des fonctions de la Commission relatives à la race, l'ascendance, le lieu d'origine, la couleur, l'origine ethnique ou la croyance décrites aux alinéas 28 f), g) ou h) ou celles que la Commission lui confie. 1981, chap. 53, art. 27.

Fonctions

**28** La Commission a pour fonction :

Fonctions de la  
Commission

- a) de promouvoir la reconnaissance de la dignité et de la valeur de la personne et d'assurer à tous l'égalité des droits et des chances, sans discrimination contraire à la loi;
- b) de favoriser la compréhension, l'acceptation et le respect de la présente loi;
- c) de recommander l'étude d'un projet ou programme spécial visant à satisfaire aux exigences du paragraphe 13 (1), sous réserve du droit d'une personne lésée par la mise en oeuvre d'un tel projet ou programme, de demander à la Commission de reconsidérer sa recommandation, l'article 36 s'appliquant avec les modifications nécessaires;
- d) d'élaborer et mettre en oeuvre des programmes d'information et d'éducation, et d'entreprendre, diriger et encourager la recherche visant à éliminer les pratiques discriminatoires qui enfreignent les droits reconnus en vertu de la présente loi;
- e) d'examiner et de revoir une loi ou un règlement, ou un programme mis en oeuvre ou une directive énoncée par une loi ou en application de celle-ci, et de faire des recommandations sur une disposition, un programme ou une directive qui, à son avis, est incompatible avec l'intention de la présente loi;
- f) d'enquêter sur une circonstance ou un événement qui suscite ou tend à susciter une tension ou un conflit et qui est perçu comme inspiré par un motif de discrimination illicite, et de prendre les mesures appropriées pour éliminer la source de la tension ou du conflit;

## HUMAN RIGHTS CODE

Combining  
of complaints

(3) Where two or more complaints,

- (a) bring into question a practice of infringement engaged in by the same person; or
- (b) have questions of law or fact in common,

the Commission may combine the complaints and deal with them in the same proceeding.

Investigation  
of complaints

32.—(1) Subject to section 33, the Commission shall investigate a complaint and endeavour to effect a settlement.

Investigation

(2) An investigation by the Commission may be made by a member or employee of the Commission who is authorized by the Commission for the purpose.

Powers on  
investigation

(3) A person authorized to investigate a complaint may,

- (a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;
- (b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;
- (c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and
- (d) question a person on matters that are or may be relevant to the complaint subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

Entry into  
dwellings

(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8).

Denial of  
entry

(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the Commission may request the Minister to appoint a board of inquiry or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8).



## CODE DES DROITS DE LA PERSONNE

- g) d'enquêter sur un problème susceptible de surgir dans une collectivité et qui est perçu comme inspiré par un motif de discrimination illicite, et de favoriser et de mettre sur pied des programmes ou des activités propres à éviter ou à atténuer le problème;
- h) de favoriser la participation de personnes et de groupes ou d'organismes privés, municipaux ou publics à des programmes visant à diminuer une tension ou un conflit qui est perçu comme inspiré par un motif de discrimination illicite;
- i) de faire respecter la présente loi et les directives de la commission d'enquête;
- j) d'exécuter les fonctions que lui dicte la présente loi ou une autre loi. 1981, chap. 53, art. 28.

**29 (1)** Aucun membre de la Commission n'est tenu de témoigner dans une cause civile ni dans une instance au sujet de renseignements obtenus au cours d'une enquête menée en vertu de la présente loi.

Preuves obtenues  
au cours d'une en-  
quête

(2) Aucune personne chargée de l'application de la présente loi n'est tenue de témoigner dans une cause civile ni dans une instance qui n'est pas introduite aux termes de la présente loi au sujet de renseignements obtenus au cours d'une enquête menée en vertu de la présente loi. 1981, chap. 53, art. 29.

Idem

**30 (1)** Au plus tard le 30 juin de chaque année, la Commission fait rapport au ministre de ses activités de l'année terminée le 31 mars précédent.

Rapport annuel

(2) Le ministre présente le rapport au lieutenant-gouverneur en conseil, qui le fait déposer devant l'Assemblée si elle siège en ce moment, sinon à la session suivante. 1981, chap. 53, art. 30.

Idem

## QUATRIÈME PARTIE

## EXÉCUTION

**31 (1)** Lorsqu'une personne se croit lésée dans un droit qui lui est reconnu par la présente loi, elle peut déposer une plainte devant la Commission selon une forme que celle-ci approuve.

Plaintes

(2) La plainte peut être introduite d'office ou à la requête de quiconque.

Idem



## HUMAN RIGHTS CODE

- Refusal to produce (6) If a person refuses to comply with a request for production of documents or things, the Commission may request the Minister to appoint a board of inquiry, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).
- Warrant for search (7) Where a justice of the peace is satisfied on evidence upon oath that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.
- Warrant for entry (8) Where a justice of the peace is satisfied by evidence upon oath that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.
- Execution of warrant (9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.
- Expiration of warrant (10) Every warrant shall name a date on which it expires, which shall be a date not later than fifteen days after it is issued.
- Obstruction (11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this Act.
- Idem (12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3) (b).
- Admissibility of copies (13) Copies of, or extracts from, documents removed from premises under clause (3) (c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.
- Decision to not deal with complaint **33.—**(1) Where it appears to the Commission that,  
 (a) the complaint is one that could or should be more appropriately dealt with under an Act other than this Act;

## CODE DES DROITS DE LA PERSONNE

(3) Lorsque deux plaintes ou plus :

Cas de plusieurs  
plaintes

- a) font état d'une habitude d'infraction chez une personne;
- b) portent sur des questions communes de droit ou de fait,

la Commission peut en traiter dans une même instance. 1981, chap. 53, art. 31.

**32** (1) Sous réserve de l'article 33, la Commission fait enquête sur une plainte et s'efforce de parvenir à un règlement.

Enquête sur une  
plainte

(2) Un membre ou un employé de la Commission peut être autorisé par celle-ci à enquêter.

Enquête

(3) La personne autorisée à enquêter sur une plainte peut :

Pouvoirs lors  
d'une enquête

- a) pénétrer dans un local, à l'exception d'un logement, à toute heure convenable, dans le but de faire enquête sur la plainte;
- b) exiger la production, pour inspection et examen, de document ou d'objet qui se rapporte ou peut se rapporter à l'enquête;
- c) après avoir donné un reçu à cet effet, enlever un document produit à la suite d'une demande conforme à l'alinéa b) en vue d'en faire une photocopie ou d'en prendre un extrait, mais le rend promptement à la personne qui l'a produit;
- d) interroger une personne sur un point qui se rapporte ou peut se rapporter à l'objet de la plainte sous réserve du droit de la personne à la présence d'un avocat ou d'un représentant personnel lors de cet interrogatoire, et en exclure une personne qui peut être hostile à l'intérêt du plaignant.

(4) Il est interdit à une personne qui fait enquête sur une plainte d'entrer dans un logement sans le consentement de l'occupant, sauf si elle détient un mandat décerné en vertu du paragraphe (8).

Entrée dans un  
logement

(5) Sous réserve du paragraphe (4), si une personne qui est ou est susceptible d'être partie à une plainte refuse à l'enquêteur d'entrer dans un endroit, lui ordonne de partir ou l'empêche d'y faire enquête, la Commission peut demander au ministre de constituer une commission d'enquête ou elle peut autoriser un employé ou un membre à demander à un juge de

Refus de laisser  
entrer une per-  
sonne

## HUMAN RIGHTS CODE

- (b) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith;
- (c) the complaint is not within the jurisdiction of the Commission; or
- (d) the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Commission is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

the Commission may, in its discretion, decide to not deal with the complaint.

Notice of  
decision  
and  
reasons

(2) Where the Commission decides to not deal with a complaint, it shall advise the complainant in writing of the decision and the reasons therefor and of the procedure under section 36 for having the decision reconsidered.

Panel of  
members  
for boards  
of inquiry

**34.—**(1) The Minister shall appoint a panel of persons to act as members of boards of inquiry.

Remuner-  
ation

(2) The members of boards of inquiry shall be paid such allowances and expenses as are fixed by the Lieutenant Governor in Council.

Referred  
to board  
of inquiry

**35.—**(1) Where the Commission fails to effect a settlement of the complaint and it appears to the Commission that the procedure is appropriate and the evidence warrants an inquiry, the Commission may request the Minister to appoint a board of inquiry and refer the subject-matter of the complaint to the board.

Notice of  
decision  
not to  
appoint  
inquiry

(2) Where the Commission decides to not request the Minister to appoint a board of inquiry, it shall advise the complainant and the person complained against in writing of the decision and the reasons therefor and inform the complainant of the procedure under section 36 for having the decision reconsidered.

Reconsidera-  
tion

**36.—**(1) Within a period of fifteen days of the date of mailing the decision and reasons therefor mentioned in subsection 33 (2) or subsection 35 (2), or such longer period as the Commission may for special reasons allow, a complainant may request the Commission to reconsider its decision by filing an application for reconsideration containing a concise statement of the material facts upon which the application is based.

Notice of  
application

(2) Upon receipt of an application for reconsideration the Commission shall as soon as is practicable notify the person



CODE DES DROITS DE LA PERSONNE

paix de lui décerner un mandat d'entrée en vertu du paragraphe (8).

(6) Si une personne refuse de produire un document ou un objet réclamé, la Commission peut demander au ministre de constituer une commission d'enquête ou elle peut autoriser un employé ou un membre à demander à un juge de paix de lui décerner un mandat de perquisition en vertu du paragraphe (7).

Refus de produire  
un document ou  
un objet

(7) Si un juge de paix reconnaît, d'après un témoignage sous serment, qu'il existe dans un endroit un document qui, selon ce qu'il est fondé à croire, peut apporter une preuve relative à la plainte, il peut décerner un mandat selon la forme prescrite pour autoriser la personne désignée à perquisitionner l'endroit visé afin d'y trouver le document, et à l'enlever afin d'en faire une photocopie ou d'en prendre un extrait. Le document doit être promptement remis à l'endroit où il a été pris.

Mandat de  
perquisition

(8) Si un juge de paix est fondé à croire, d'après un témoignage sous serment, qu'il est nécessaire de pénétrer dans un logement ou dans un local dont l'entrée a été interdite pour faire enquête sur une plainte, il peut décerner un mandat selon la forme prescrite pour autoriser la personne désignée à pénétrer dans ce logement ou ce local.

Mandat autorisant  
l'entrée d'une per-  
sonne

(9) Le mandat décerné en vertu des paragraphes (7) ou (8) doit être exécuté à une heure convenable, selon ce qui y est précisé.

Exécution du  
mandat

(10) Le mandat doit porter une date d'expiration, fixée au plus tard quinze jours après la délivrance du mandat.

Expiration du  
mandat

(11) Il est interdit d'entraver le travail d'une personne qui exécute un mandat ou d'empêcher de quelque façon l'étude d'une plainte aux termes de la présente loi.

Entrave

(12) Toutefois, le refus de produire un document ou un objet à la suite d'une demande conforme à l'alinéa (3) b) ne constitue pas une infraction au paragraphe (11).

Idem

(13) La photocopie ou l'extrait d'un document enlevé en conformité avec l'alinéa (3) c) ou le paragraphe (7), et qui est certifié conforme par la personne qui a effectué l'opération, est recevable en preuve comme un original et comporte la même valeur probante. 1981, chap. 53, art. 32.

Recevabilité en  
preuve

33 (1) Lorsqu'il appert à la Commission que :

Décision de ne  
pas instruire la  
plainte

- a) la plainte peut ou doit être instruite en conformité plu-  
tôt avec une autre loi;



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complained against of the application and afford the person an opportunity to make written submissions with respect thereto within such time as the Commission specifies.

## Decision

(3) Every decision of the Commission on reconsideration together with the reasons therefor shall be recorded in writing and promptly communicated to the complainant and the person complained against and the decision shall be final.

Appointment  
of board

37.—(1) Where the Commission requests the Minister to appoint a board of inquiry, the Minister shall appoint from the panel one or more persons to form the board of inquiry and the Minister shall communicate the names of the persons forming the board to the parties to the inquiry.

Members at  
hearing not  
to have  
taken part  
in investi-  
gation, etc

(2) A member of the board hearing a complaint must not have taken part in any investigation or consideration of the subject-matter of the inquiry before the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the inquiry with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the board may seek legal advice from an adviser independent of the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

## Hearing

38.—(1) The board of inquiry shall hold a hearing,

- (a) to determine whether a right of the complainant under this Act has been infringed;
- (b) to determine who infringed the right, and
- (c) to decide upon an appropriate order under section 40,

and the hearing shall be commenced within thirty days after the date on which the members were appointed.

## Parties

- (2) The parties to a proceeding before a board of inquiry are,
  - (a) the Commission, which shall have the carriage of the complaint;
  - (b) the complainant;
  - (c) any person who the Commission alleges has infringed the right;
  - (d) any person appearing to the board of inquiry to have infringed the right;

## CODE DES DROITS DE LA PERSONNE

- b) la plainte est futile, vexatoire ou entachée de mauvaise foi;
- c) la plainte ne relève pas de sa compétence;
- d) les faits sur lesquels la plainte est fondée se sont produits plus de six mois avant son dépôt, à moins que la Commission ne reconnaisse que le retard s'est produit de bonne foi et qu'il ne causera de préjudice important à personne,

la Commission peut, si elle le juge à propos, décider de classer la plainte.

(2) Si la Commission décide de classer une plainte, elle communique par écrit au plaignant sa décision motivée et l'informe de la marche à suivre, conformément à l'article 36, pour demander un réexamen de la décision. 1981, chap. 53, art. 33.

Avis de décision  
motivée

**34 (1)** Le ministre dresse une liste de personnes aptes à faire partie d'une commission d'enquête.

Membre d'une  
commission  
d'enquête

(2) Les membres d'une commission d'enquête reçoivent la rémunération et les indemnités que fixe le lieutenant-gouverneur en conseil. 1981, chap. 53, art. 34.

Rémunération

**35 (1)** Si la Commission ne peut parvenir au règlement de la question faisant l'objet d'une plainte et qu'il semble que la procédure est appropriée et que les preuves justifient une enquête, la Commission peut demander au ministre de constituer une commission d'enquête et de renvoyer la plainte à cette commission.

Renvoi d'une  
plainte à une com-  
mission d'enquête

(2) Si la Commission décide de ne pas demander au ministre de constituer une commission d'enquête, elle communique par écrit au plaignant et à l'intimé sa décision motivée et informe le plaignant de la marche à suivre, conformément à l'article 36, pour demander un réexamen de la décision. 1981, chap. 53, art. 35.

Décision de ne  
pas demander une  
commission d'en-  
quête

**36 (1)** Au cours des quinze jours qui suivent la date de la mise à la poste de la décision motivée en vertu des paragraphes 33 (2) ou 35 (2), ou au cours d'un délai plus long que la Commission peut autoriser pour des raisons particulières, un plaignant peut demander à la Commission de réexaminer sa décision en déposant une demande contenant un énoncé concis des arguments à l'appui.

Réexamen

## HUMAN RIGHTS CODE

(e) where the complaint is of alleged conduct constituting harassment under subsection 2 (2) or subsection 4 (2) or of alleged conduct under section 6, any person who, in the opinion of the board, knew or was in possession of facts from which he or she ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct.

(3) A party may be added by the board of inquiry under clause (2) (d) or clause (2) (e) at any stage of the proceeding upon such terms as the board considers proper.

(4) Where a board exercises its power under clause 12 (1) (b) of the *Statutory Powers Procedure Act* to issue a summons requiring the production in evidence of documents or things, it may, upon the production of the documents or things before it, adjourn the proceedings to permit the parties to examine the documents or things.

(5) The board may, where it appears to be in the interests of justice, direct that the board and the parties and their counsel or representatives shall have a view of any place or thing, and may adjourn the proceedings for that purpose.

Adding  
parties

39. The oral evidence taken before a board at a hearing shall be recorded, and copies of a transcript thereof shall be furnished upon request upon the same terms as in the Supreme Court.

Adjournment  
on production  
R.S.O. 1980,  
c. 484

40.—(1) Where the board of inquiry, after a hearing, finds that a right of the complainant under Part I has been infringed and that the infringement is a contravention of section 8 by a party to the proceeding, the board may, by order,

Adjournment  
for view

(a) direct the party to do anything that, in the opinion of the board, the party ought to do to achieve compliance with this Act, both in respect of the complaint and in respect of future practices; and

Recording  
of evidence

(b) direct the party to make restitution, including monetary compensation, for loss arising out of the infringement, and, where the infringement has been engaged in wilfully or recklessly, monetary compensation may include an award, not exceeding \$10,000, for mental anguish.

Orders of  
boards of  
inquiry

(2) Where the board of inquiry at the conclusion of the hearing finds that a right of a person under Part I has been infringed by discrimination because of handicap, the board may then proceed to inquire whether, Idem



## CODE DES DROITS DE LA PERSONNE

(2) À la réception d'une demande de réexamen, la Commission en informe l'intimé le plus tôt possible et lui donne la possibilité d'y répondre par écrit dans le délai imparti.

Avis de demande

(3) La décision motivée de la Commission quant à une demande de réexamen est consignée et immédiatement communiquée au plaignant et à l'intimé. La décision a la force de chose jugée. 1981, chap. 53, art. 36.

Décision

37 (1) Si la Commission demande au ministre de constituer une commission d'enquête, celui-ci la constitue en s'inspirant de la liste de personnes déjà établie. Il communique les noms des membres aux parties en cause.

Constitution d'une commission d'enquête

(2) Les membres d'une commission qui instruisent une plainte ne doivent pas avoir pris part avant l'audience à une enquête ni à une étude en rapport avec l'objet de l'enquête. Ils ne communiquent directement ni indirectement avec qui que ce soit, notamment l'une des parties ni son représentant, au sujet de l'objet de l'enquête, si ce n'est après en avoir avisé les parties et leur avoir fourni l'occasion d'y participer. Toutefois, la commission d'enquête peut solliciter les conseils juridiques d'un expert indépendant des parties et, dans ce cas, la teneur du conseil donné est communiquée aux parties pour qu'elles puissent présenter des observations relatives au droit applicable. 1981, chap. 53, art. 37.

Les membres siègent sans connaissances antérieures

38 (1) La commission d'enquête tient une audience pour déterminer :

Audience

- a) l'atteinte, s'il y a lieu, au droit du plaignant reconnu à la présente loi;
- b) l'auteur de l'infraction;
- c) la directive à donner en vertu de l'article 40.

La première audience a lieu au cours des trente jours qui suivent la date à laquelle les membres ont été désignés.

(2) Sont parties à l'instance devant une commission d'enquête :

Parties

- a) la Commission, à qui appartient la direction de la poursuite;
- b) le plaignant;
- c) l'auteur de l'infraction présumé tel par la Commission;



## HUMAN RIGHTS CODE

- (a) the person does not have access to premises, services, goods, facilities or accommodation of the party who is found to be a contravener, because of handicap; or
- (b) the premises, services, goods, facilities or accommodation of the party who is found to be a contravener lack amenities that are appropriate to persons because of the handicap,

and after making a finding thereon, the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures as will make such provision for access or amenities or as are set out in the order.

Idem

(3) In addition to the powers conferred by subsection (2), where the board of inquiry at the conclusion of the hearing under subsection (1) finds that a right of a person under Part I has been infringed by discrimination because of handicap, the board may then proceed to inquire and make a finding as to whether the equipment or essential duties attending the exercise of the right could be adapted to meet the needs of the person whose right is infringed and, after making a finding thereon, the board may, unless the costs occasioned thereby would cause undue hardship and subject to the regulations, order that the party take such measures to adapt the equipment or duties as will meet such needs and as are set out in the order.

Order to  
prevent  
harassment

(4) Where a board makes a finding under subsection (1) that a right is infringed on the ground of harassment under subsection 2 (2) or subsection 4 (2) or conduct under section 6, and the board finds that a person who is a party to the proceeding,

- (a) knew or was in possession of knowledge from which he ought to have known of the infringement; and
- (b) had the authority by reasonably available means to penalize or prevent the conduct and failed to use it,

the board shall remain seized of the matter and upon complaint of a continuation or repetition of the infringement of the right the Commission may investigate the complaint and, subject to subsection 35 (2), request the board to re-convene and if the board finds that a person who is a party to the proceeding,

- (c) knew or was in possession of knowledge from which he or she ought to have known of the repetition of infringement; and
- (d) had the authority by reasonably available means to penalize or prevent the continuation or repetition of the conduct and failed to use it,

## CODE DES DROITS DE LA PERSONNE

d) l'auteur de l'infraction présumé tel par la commission d'enquête;

e) la personne qui, selon la commission d'enquête, était au courant de faits d'après lesquels elle aurait vraisemblablement dû connaître la conduite qui fait l'objet de la plainte et qui avait le pouvoir de pénaliser ou d'empêcher cette conduite, lorsque la plainte porte sur une prétendue conduite qui constitue un harcèlement au sens des paragraphes 2 (2) ou 4 (2) ou de l'article 6.

(3) La commission d'enquête peut ajouter une autre partie prévue aux alinéas (2) d) ou e) à n'importe quelle étape de la procédure et sous réserve des conditions qu'elle juge opportunes.

Parties supplé-  
mentaires

(4) Si une commission exerce, conformément à l'alinéa 12 (1) b) de la *Loi sur l'exercice des compétences légales*, son pouvoir de lancer une citation exigeant la production d'un document ou d'un objet à titre de preuve, elle peut, à sa production, remettre l'enquête pour permettre aux parties d'examiner ce document ou cet objet.

Levée de séance

L. R.O. 1980,  
chap. 484

(5) La commission d'enquête peut, si cela lui paraît favorable à la justice, ordonner la descente sur les lieux en présence des parties et de leurs avocats ou représentants, et ajourner l'enquête. 1981, chap. 53, art. 38.

Descente sur les  
lieux

39 Il est dressé procès-verbal de la preuve testimoniale recueillie devant la commission d'enquête et copie de sa transcription est fournie sur demande aux mêmes conditions que celles qui sont imposées en Cour suprême. 1981, chap. 53, art. 39.

Procès-verbal de  
la preuve testimo-  
niale

40 (1) Lorsque, à la clôture du débat, la commission d'enquête conclut qu'une atteinte au droit du plaignant reconnu à la première partie constitue une infraction à l'article 8 par une partie à l'instance, elle peut ordonner à la partie visée :

Directive de la  
commission  
d'enquête

a) de prendre les mesures nécessaires pour respecter la présente loi, en ce qui concerne la plainte et les pratiques ultérieures;

b) d'effectuer une restitution, y compris une indemnisation financière, pour la perte consécutive à l'atteinte et, si l'atteinte a été volontaire ou commise avec insouciance, l'indemnisation peut comprendre des dommages moraux d'au plus 10 000 dollars.

(2) Lorsque, à la clôture du débat, la commission d'enquête conclut que le droit d'une personne reconnu à la première par-

Idem



## HUMAN RIGHTS CODE

the board may make an order requiring the person to take whatever sanctions or steps are reasonably available to prevent any further continuation or repetition of the infringement of the right.

Re-appoint-  
ment of  
board

(5) Where a board of inquiry for any reason is unable to exercise its powers under this section or section 38, the Commission may request the Minister to appoint a new board of inquiry in its place.

Costs

(6) Where, upon dismissing a complaint, the board of inquiry finds that,

(a) the complaint was trivial, frivolous, vexatious or made in bad faith; or

(b) in the particular circumstances undue hardship was caused to the person complained against,

the board of inquiry may order the Commission to pay to the person complained against such costs as are fixed by the board.

Decision  
within  
30 days

(7) The board of inquiry shall make its finding and decision within thirty days after the conclusion of its hearing.

Appeal from  
decision of  
board of  
inquiry

41.—(1) Any party to a proceeding before a board of inquiry may appeal from a decision or order of the board to the Divisional Court in accordance with the rules of court.

Record to  
be filed  
in court

(2) Where notice of an appeal is served under this section, the board of inquiry shall forthwith file in the Divisional Court the record of the proceedings before it in which the decision or order appealed from was made and the record, together with a transcript of the oral evidence taken before the board if it is not part of the record of the board, shall constitute the record in the appeal.

Powers  
of court

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or reverse the decision or order of the board of inquiry or direct the board to make any decision or order that the board is authorized to make under this Act and the court may substitute its opinion for that of the board.

Settlements

42. Where a settlement of a complaint is agreed to in writing, signed by the parties and approved by the Commission, the settlement is binding upon the parties, and a breach of the settlement is grounds for a complaint under section 31, and this Part applies to the complaint in the same manner as if the breach of the settlement were an infringement of a right under this Act.

## CODE DES DROITS DE LA PERSONNE

tie a été enfreint à la suite d'un acte discriminatoire fondé sur une infirmité, elle peut mener une enquête pour déterminer si :

- a) la personne visée est privée, à cause de son infirmité, de l'accès à un logement, un lieu, une installation, un service ou un bien de la partie contrevenante;
- b) le logement, le lieu, l'installation, le service ou le bien de la partie contrevenante possède ou non les commodités propres à une personne handicapée.

À la suite de cette constatation, la commission peut, sous réserve des règlements, ordonner à la partie contrevenante de prendre les mesures nécessaires pour permettre tel accès ou offrir telle commodité, sauf si les frais occasionnés par ces mesures entraînent des dépenses excessives. Elle peut préciser ces mesures.

(3) Lorsque, à la clôture du débat aux termes du paragraphe (1), la commission d'enquête conclut que le droit d'une personne reconnu à la première partie a été enfreint à la suite d'un acte discriminatoire fondé sur une infirmité, elle peut, outre les pouvoirs qui lui sont conférés au paragraphe (2), mener une enquête et procéder à des constatations afin de déterminer si l'équipement ou les fonctions essentielles relatives à l'exercice de ce droit pourraient être adaptés pour satisfaire aux besoins de la partie lésée. À la suite de ces constatations, la commission peut, sous réserve des règlements, ordonner à la partie contrevenante de prendre les mesures nécessaires pour adapter l'équipement ou les fonctions de la façon énoncée dans la directive pour qu'ils conviennent aux besoins de la personne handicapée, sauf si les frais occasionnés par ces mesures entraînent des dépenses excessives. Idem

(4) Lorsque la commission d'enquête conclut, aux termes du paragraphe (1), qu'un droit est enfreint à cause d'un motif fondé sur une mesure de harcèlement au sens des paragraphes 2 (2) ou 4 (2) ou d'une forme de conduite visée à l'article 6, et qu'une personne qui est partie à l'instance : Directive empêchant le harcèlement

- a) était au courant de faits lui permettant de connaître l'infraction;
- b) avait l'autorisation, grâce à des moyens normalement disponibles, de pénaliser ou d'empêcher cette forme de conduite et n'a rien fait,

la commission reste saisie de l'affaire. À la réception d'une plainte selon laquelle le droit visé continue d'être enfreint ou a été enfreint de nouveau, la Commission des droits de la per-



## HUMAN RIGHTS CODE

- Penalty**            **43.—**(1) Every person who contravenes section 8, subsection 32 (11), or an order of a board of inquiry, is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.
- Consent to prosecution**        (2) No prosecution for an offence under this Act shall be instituted except with the consent in writing of the Attorney General.
- Acts of officers, etc.**            **44.—**(1) For the purposes of this Act, except subsection 2 (2), subsection 4 (2), section 6 and subsection 43 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.
- Opinion re authority or acquiescence**        (2) At the request of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization, a board of inquiry in its decision shall make known whether or not, in its opinion, an act or thing done or omitted to be done by an officer, official, employee or agent was done or omitted to be done with or without the authority or acquiescence of the corporation, trade union, trade or occupational association, unincorporated association or employers' organization, and the opinion does not affect the application of subsection (1).

## PART V

## GENERAL

- Interpretation**            **45.** In this Act,
- (a) "Commission" means the Ontario Human Rights Commission;
- (b) "Minister" means the member of the Executive Council to whom the powers and duties of the Minister under this Act are assigned by the Lieutenant Governor in Council;
- (c) "person", in addition to the extended meaning given it by the *Interpretation Act*, includes an employment agency, an employers' organization, an unincorporated association, a trade or occupational association, a trade union, a partnership, a municipality and a board of police commissioners established under the *Police Act*.

## CODE DES DROITS DE LA PERSONNE

sonne peut étudier la plainte et, sous réserve du paragraphe 35 (2), demander à la commission d'enquête de se réunir à nouveau. Si la commission d'enquête conclut que la personne qui est partie à l'instance :

- c) était au courant de faits lui permettant de connaître la répétition de l'infraction;
- d) avait l'autorisation, grâce à des moyens normalement disponibles, de pénaliser ou d'empêcher la continuation ou la répétition de la forme de conduite en cause et n'a rien fait,

elle peut exiger que cette personne prenne les sanctions ou les mesures normalement disponibles pour empêcher la continuation ou la répétition de l'infraction visée.

(5) Si la commission d'enquête est empêchée, pour quelque raison, d'exercer les pouvoirs qui lui sont conférés au présent article ou à l'article 38, la Commission des droits de la personne peut demander au ministre de constituer une nouvelle commission d'enquête pour remplacer la première.

Nouvelle commission d'enquête

(6) Si, au moment où elle rejette une plainte, la commission d'enquête conclut que :

Frais

- a) la plainte est futile, vexatoire ou entachée de mauvaise foi;
- b) des dépenses excessives ont été occasionnées dans les circonstances à la personne qui fait l'objet de la plainte,

la commission d'enquête peut ordonner à la Commission des droits de la personne de verser à cette partie le montant des frais que fixe la commission d'enquête.

(7) La commission d'enquête doit arriver à une conclusion et rendre sa décision dans les trente jours qui suivent la clôture du débat. 1981, chap. 53, art. 40.

Délai de 30 jours

**41** (1) La commission d'enquête statue à charge d'appel devant la Cour divisionnaire, conformément aux règles de pratique de cette cour.

Appel d'une décision

(2) Si un avis d'appel est signifié aux termes du présent article, la commission d'enquête dépose sans délai devant la Cour divisionnaire le dossier de l'enquête à la suite de laquelle a été rendue la décision ou la directive. Ce dossier, accompagné de la transcription de la preuve déposée devant la commission si elle ne fait pas partie de son dossier, constitue le dossier d'appel.

Dossier déposé à la cour

## HUMAN RIGHTS CODE

Act binds  
Crown

**46.—**(1) This Act binds the Crown and every agency of the Crown.

Act has  
primacy  
over other  
Acts

(2) Where a provision in an Act or regulation purports to require or authorize conduct that is a contravention of Part I, this Act applies and prevails unless the Act or regulation specifically provides that it is to apply notwithstanding this Act.

Application

(3) Subsection (2) does not apply to an Act or regulation heretofore enacted or made until two years after this Act comes into force.

Regulations

**47.** The Lieutenant Governor in Council may make regulations,

(a) prescribing criteria or guidelines for boards of inquiry in the making of findings under subsections 40 (2) and (3);

(b) prescribing forms and notices and providing for their use.

Repeal

**48.** The *Ontario Human Rights Code*, being chapter 340 of the Revised Statutes of Ontario, 1980, is repealed.

Commence-  
ment

**49.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. \*

Short title

**50.** The short title of this Act is the *Human Rights Code, 1981*.

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\* This act was proclaimed in force as of the 15th day of June, 1982.



## CODE DES DROITS DE LA PERSONNE

(3) L'appel interjeté aux termes du présent article peut porter sur des questions de droit ou de fait ou sur les deux. La cour peut confirmer ou infirmer la décision ou la directive de la commission d'enquête ou lui ordonner de rendre une décision ou de donner une directive autorisée par la présente loi. La cour peut substituer son opinion à celle de la commission. 1981, chap. 53, art. 41.

Pouvoirs de la cour

42 Lorsqu'un règlement intervient par écrit, qu'il est signé par les parties et approuvé par la Commission des droits de la personne, il lie les parties. Une infraction au règlement constitue un motif de plainte aux termes de l'article 31, et la présente partie s'applique à la plainte de la même façon que s'il s'agissait d'une atteinte à un droit reconnu par la présente loi. 1981, chap. 53, art. 42.

Règlement

43 (1) Quiconque enfreint l'article 8, le paragraphe 32 (11) ou une directive de la commission d'enquête est coupable d'une infraction et passible, sur déclaration de culpabilité, d'une amende d'au plus 25 000 dollars.

Amende

(2) Est irrecevable la poursuite consécutive à une infraction à la présente loi sans le consentement écrit du procureur général. 1981, chap. 53, art. 43.

Poursuite

44 (1) Pour l'application de la présente loi, à l'exception des paragraphes 2 (2), 4 (2) ou 43 (1) et de l'article 6, lorsqu'un dirigeant, un fonctionnaire, un employé ou un mandataire d'une compagnie ou d'une personne morale, d'un syndicat, d'une association commerciale ou professionnelle, d'une association non constituée en personne morale ou d'une organisation patronale fait ou omet une action dans l'exercice de son emploi, cette action ou cette omission est réputée avoir été faite ou omise par l'organisme qui emploie cette personne.

Actes des dirigeants, etc.

(2) À la demande d'une compagnie ou d'une personne morale, d'un syndicat, d'une association commerciale ou professionnelle, d'une association non constituée en personne morale ou d'une organisation patronale, une commission d'enquête peut déterminer dans sa décision si, à son avis, un dirigeant, un fonctionnaire, un employé ou un mandataire a fait ou omis une action sans l'autorisation ou l'acquiescement de l'organisme qui emploie cette personne. Cette opinion n'a pas d'incidence sur l'application du paragraphe (1). 1981, chap. 53, art. 44.

Opinion relative à l'autorisation ou à l'acquiescement de l'employeur



## CODE DES DROITS DE LA PERSONNE

## CINQUIÈME PARTIE

## DISPOSITIONS GÉNÉRALES

## Définitions

**45** Les définitions qui suivent s'appliquent à la présente loi.

«Commission» La Commission ontarienne des droits de la personne.

«ministre» Le membre du Conseil des ministres à qui le lieutenant-gouverneur en conseil attribue le pouvoir et la fonction de ministre prévus à la présente loi.

L.R.O. 1980,  
chap. 219 et 381

«personne» Outre le sens étendu que lui donne la *Loi d'interprétation*, ce terme comprend une agence de placement, une organisation patronale, une association non constituée en personne morale, une association commerciale ou professionnelle, un syndicat, une société en nom collectif, une municipalité et un conseil de commissaires de police constitué aux termes de la *Loi sur la police*\*. 1981, chap. 53, art. 45.

## Couronne liée

**46 (1)** La présente loi lie la Couronne et ses organismes.

## La présente loi prévaut

(2) Lorsqu'une disposition d'une loi ou d'un règlement prétend exiger ou autoriser une forme de conduite qui constitue une infraction à la première partie, la présente loi s'applique et prévaut, à moins que la loi ou le règlement visé ne précise expressément qu'il s'applique malgré la présente loi.

## Champ d'application

(3) Le paragraphe (2) ne s'applique à une loi déjà édictée ou à un règlement déjà pris que deux ans après l'entrée en vigueur de la présente loi. 1981, chap. 53, art. 46.

## Règlement

**47** Le lieutenant-gouverneur en conseil peut, par règlement, prévoir :

- a) des critères ou principes que les commissions d'enquête doivent respecter lorsqu'elles font des constatations aux termes des paragraphes 40 (2) et (3);
- b) des formules et avis ainsi que les modalités de leur emploi. 1981, chap. 53, art. 47.

## Abrogation

**48** Le *Code ontarien des droits de la personne*\*, qui constitue le chapitre 340 des Lois refondues de l'Ontario de 1980, est abrogé. 1981, chap. 53, art. 48.

## CODE DES DROITS DE LA PERSONNE

49 La présente loi entre en vigueur le jour que désigne le lieutenant-gouverneur par proclamation. 1981, chap. 53, art. 49. Entrée en vigueur

50 Le titre abrégé de la présente loi est le *Code des droits de la personne*. 1981, chap. 53, art. 50. Titre abrégé

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\* Cette loi est entrée en vigueur le 15 juin 1982.

## CODE DES DROITS DE LA PERSONNE

## CONCORDANCE DES DÉFINITIONS ET DES TITRES

Afin de faciliter les recherches, les définitions françaises correspondent comme suit aux définitions de la version anglaise :

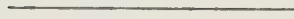
à cause d'une infirmité	because of handicap
âge	age
assurance-groupe	group insurance
casier judiciaire	record of offences
Commission	Commission
conjoint	spouse
égal	equal
état familial	family status
état matrimonial	marital status
harcèlement	harassment
ministre	Minister
personne	person
service	service

Afin de faciliter les recherches, les titres anglais des lois mentionnées dans le texte sont les suivants :

* Acte de l'Amérique du Nord britannique, 1867	The British North America Act, 1867
* Code ontarien des droits de la personne	Ontario Human Rights Code
Loi sur le casier judiciaire (Canada)	Criminal Records Act (Canada)
Loi sur l'éducation	Education Act
Loi sur l'exercice des compétences légales	Statutory Powers Procedure Act
* Loi sur la fonction publique	Public Service Act
Loi d'interprétation	Interpretation Act
Loi sur les normes d'emploi	Employment Standards Act
* Loi sur la police	Police Act

\* Le titre français des lois mentionnées dans le texte et non encore traduites n'est donné qu'à titre indicatif.

LANGUAGE RIGHTS



DROIT LINGUISTIQUES





## LANGUAGE RIGHTS

### Introduction

According to the 1981 census, 77.4% of the population of Ontario claim English as their mother tongue, 5.5% claim French, and 17% neither English or French. While English remains the sole official language of the province, the Legislator of Ontario recognizes in some ways the use of French and other minority languages. This can be found in some statutory provisions concerning such matters as legislation, the administration of justice, education, business, and municipal administration. These statutory provisions supplement the federal legislation referred to in volume 2 of this collection, Chapter I, and in sections 16 to 23 of the Canadian Charter of Rights and Freedoms, reproduced in volume 1 of this collection, pp. A127, and subs. These provisions are taken from the following statutes of Ontario, reproduced below:

1. Evidence Act, R.S.O. 1980, c. 145.
2. Courts of Justice Act, 1984, S.O. 1984, c. 11.
3. Juries Act, R.S.O. 1980, c. 226, as amended.
4. Act to Revise the Reciprocal Enforcement of Maintenance Orders Act, S.O. 1982, c. 9.
5. Registry Act, R.S.O. 1980, c. 445, as amended.
6. Education Act, R.S.O. 1980, c. 129, as amended.
7. Act to Require the Essex County Board of Education to Provide a French-Language Secondary School, S.O. 1977, c. 5.
8. Business Corporation Act, 1982, S.O. 1982, c. 4.
9. Corporations Act, R.S.O. 1980, c. 95.
10. Co-operative Corporations Act, R.S.O. 1980, c. 91, as amended.
11. Credit Unions and Caisses Populaires Act, R.S.O. 1980, c. 102.
12. Municipal Act, R.S.O. 1980, c. 302, as amended.
13. Municipal Elections Act, R.S.O. 1980, c. 308, as amended.
14. Regional Municipality of Ottawa-Carleton Act, R.S.O. 1980, c. 439, as amended.
15. Regional Municipality of Sudbury Act, R.S.O. 1980, c. 441, as amended.
16. Local Services Boards Act, R.S.O. 1980, c. 252.
17. Occupational Health and Safety Act, R.S.O. 1980, c. 321.



## DROITS LINGUISTIQUES

### Introduction

D'après les données du recensement de 1981, la population ontarienne, eu égard à la langue maternelle de ses habitants, se compose de 77.4% d'anglophones, de 5.5% de francophones et de 17% de gens dont la langue maternelle n'est ni l'anglais ni le français. Bien que l'anglais demeure la seule langue officielle de la province, le législateur ontarien n'est pas sans reconnaître, dans une certaine mesure, l'usage du français et des autres langues de la minorité. C'est la constatation qui se dégage à la lecture de certaines dispositions législatives qu'il a adoptées dans les domaines de la législation, de la justice, de l'enseignement, des affaires et de l'administration municipale. Ces dispositions législatives viennent s'ajouter à la législation fédérale rapportée au chapitre I du volume 2 de cette collection et aux articles 16 à 23 de la Charte canadienne des droits et libertés reproduite aux pages A127 et suivante du volume 1 de cette collection. Ces dispositions sont tirées des lois ontariennes suivantes et sont reproduites ci-après:

1. Evidence Act, R.S.O. 1980, c. 145
2. Courts of Justice Act, S.O. 1984, c. 11
3. Juries Act, R.S.O. 1980, c. 226 et ses modifications
4. Act to Revise the Reciprocal Enforcement of Maintenance Orders Act, S.O. 1982, c. 9
5. Registry Act, R.S.O. 1980, c. 445 et ses modifications
6. Education Act, R.S.O. 1980, c. 129 et ses modifications
7. Act to Require The Essex County Board of Education to Provide a French-language Secondary School, S.O. 1977, c. 5
8. Business Corporation Act, 1982, S.O. 1982, c. 4
9. Corporations Act, R.S.O. 1980, c. 95
10. Co-operative Corporations Act, R.S.O. 1980, c. 91 et ses modifications
11. Credit Unions and Caisses Populaires Act, R.S.O. 1980, c. 102



12. Municipal Act, R.S.O. 1980, c. 302 et ses modifications
13. Municipal Elections Act, R.S.O. 1980, c. 308 et ses modifications
14. Regional Municipality of Ottawa-Carleton Act, R.S.O. 1980, c. 439 et ses modifications
15. Regional Municipality of Sudbury Act, R.S.O. 1980, c. 441 et ses modifications
16. Local Services Boards Act, R.S.O. 1980, c. 252
17. Occupational Health and Safety Act, R.S.O. 1980, c. 321

Evidence Act

R.S.O. 1980, c. 145

.....

25.

(2) Copies of the statutes of Ontario that are translated into the French language and that purport to be published by the Ministry of the Attorney General and printed by the Queen's Printer shall be admitted in evidence to prove the contents thereof but, in the event of a conflict between the version published under the *Statutes Act* and the French language translation, the version published under the *Statutes Act* shall prevail. 1979, c. 48, s. 1.

Copies of  
French  
translation

R.S.O. 1980,  
c. 483

.....

## COURTS OF JUSTICE ACT, 1984

S.O. 1984, c. 11

.....

## LANGUAGE

Official  
languages of  
the courts**135.**—(1) The official languages of the courts of Ontario are English and French. *New.*Proceedings  
in English  
unless  
otherwise  
provided

(2) Except as otherwise provided with respect to the use of the French language,

- (a) hearings in courts shall be conducted in the English language and evidence adduced in a language other than English shall be interpreted into the English language; and
- (b) documents filed in courts shall be in the English language or shall be accompanied by a translation of the document into the English language certified by affidavit of the translator. R.S.O. 1980, c. 223, s. 130 (1).

“designated  
court”  
defined**136.**—(1) In this section, “designated court” means,

- (a) a court sitting in,
  - (i) the county of Essex or Renfrew,
  - (ii) the judicial district of Niagara South, Ottawa-Carleton or York,
  - (iii) the territorial district of Algoma, Cochrane, Nipissing, Sudbury or Timiskaming,
  - (iv) the united counties of Prescott and Russell or the united counties of Stormont, Dundas and Glengarry;
- (b) a court designated by order of the Lieutenant Governor in Council, sitting in a place that is not in a county or district mentioned in clause (a) and is designated in the order. R.S.O. 1980, c. 223, s. 130 (2, 3); 1983, c. 3, s. 1 (1).

Non-jury trial  
before  
bilingual  
judge

(2) In a proceeding in a designated court without a jury, a party who speaks the French language has the right to require that the hearing be conducted before a judge who speaks both the English and French languages.

## COURTS OF JUSTICE

(3) In a proceeding in a designated court referred to in clause (1) (a) that is to be heard by a judge and jury, a party who speaks the French language has the right to require that the hearing be conducted before a judge and jurors who speak both the English and French languages.

Jury trial  
before  
bilingual  
judge and  
jury

(4) Where a right under subsection (2) or (3) is exercised,

Proceedings  
in English  
and French

- (a) all evidence adduced and submissions made at the hearing in the proceeding in the English or French language shall be received, recorded and transcribed in the language in which it is given;
- (b) any other part of the hearing may be conducted in the French language if, in the opinion of the presiding judge, the hearing can be so conducted;
- (c) any oral evidence adduced at an examination before or after the hearing in the proceeding in the English or French language shall be received, recorded and transcribed in the language in which it is given;
- (d) with the consent of all the parties or by order of the court, clauses (a) and (b) apply to any other step in the proceeding;
- (e) with the consent of all the parties, pleadings and other documents filed in the proceeding may be in the French language only;
- (f) the reasons for the decision in the proceeding may be in either the English or French language; and
- (g) on the request of a party or counsel who speaks the English or French language, but not both, the court shall provide,
  - (i) interpretation of anything given orally in the other language under clause (a), (b), (c) or (d), and
  - (ii) translation of documents in the other language under clause (a), (d) or (f), unless the court considers that the ends of justice do not require the expense of translation,

into the language spoken by the party or counsel.  
R.S.O. 1980, c. 223, s. 130 (6, 7).



COURTS OF JUSTICE

Appeals

(5) Where an appeal is taken in a proceeding to which subsection (4) applies,

- (a) a party who speaks the French language has the right to require the hearing of the appeal to be conducted before a judge or judges who speak both the English and French languages, in which case subsection (4) applies, with necessary modifications, to the hearing of the appeal; and
- (b) the court whose decision is appealed shall provide a translation into the English or French language, at the request of a party or counsel who speaks only one of these languages, of any part of the transcript of the hearing that is in the other language.

Court documents

(6) A document filed by a party before the hearing in a proceeding in the Provincial Court (Family Division) or the Provincial Court (Civil Division) where the court is a designated court may be in the French language only. R.S.O. 1980, c. 223, s. 130 (8); 1983, c. 3, s. 1 (2).

Process

(7) A process issued in or giving rise to a criminal proceeding or a proceeding in the Provincial Offences Court where it is a designated court may be filed in the court in the French language only.

Translation

(8) A document or process referred to in subsection (6) or (7) that is filed in the English or French language only shall be translated by the court into the other language on the request of a party.

Interpretation in undesignated courts

(9) Where, at a hearing in a court that is not a designated court or at a hearing in a designated court to which subsection (4) does not apply, a party acting in person makes submissions to the court in the French language or a witness gives oral evidence in the French language, the court shall provide an interpreter to translate the submissions or evidence into the English language.

Corporations, etc.

(10) A corporation, partnership or sole proprietorship may claim the rights under this section in the same manner as a person who speaks either the English or French language, unless the court orders otherwise.

Regulations

(11) The Lieutenant Governor in Council may make regulations prescribing procedures for the purpose of this section. *New.*

# Juries Act

R.S.O. 1980, c. 226

with amendments to date, including 1981, c. 47, s. 22

et ses modifications à jour, y inclus 1981, c. 47, s. 22

.....

8.

(2) Where the county or Supreme Court is designated in a county or district under section 130 of the *Judicature Act*, the jury roll prepared under subsection (1) shall be divided into two parts and,

English and  
bilingual  
jury rolls  
R.S.O. 1980,  
c. 223

- (a) in one part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand the English language; and
- (b) in the other part the sheriff shall include those persons who appear, by the returns to jury service notices, to speak, read and understand both the English and the French languages. 1978, c. 27, s. 1.

.....



**An Act to revise the Reciprocal  
Enforcement of Maintenance Orders Act**

S.O. 1982, c. 9

.....

4. (3) Where an order or other document received by a court is not in English or French, the order or other document shall have attached to it from the other jurisdiction a translation in English or French approved by the court and the order or other document shall be deemed to be in English or French for the purposes of this Act.

Translation

.....

—————

**Loi de 1982 sur l'exécution réciproque d'ordonnances  
alimentaires**

L.O. 1982, c. 9

.....

14(3) Lorsqu'une ordonnance ou un autre document que reçoit un tribunal ne sont pas rédigés en anglais ou en français, l'autre pays leur annexe une traduction dans l'une ou l'autre de ces langues, soumise à l'approbation du tribunal. L'ordonnance ou l'autre document sont alors réputés rédigés en anglais ou en français pour l'application de la présente loi. 1982, chap. 9, art. 14.

Traduction

.....



## Registry Act

R.S.O. 1980, c. 445

with amendments to date, including 1982, c. 46, s. 1

.....

Registrations  
in languages  
other than  
English

38. Where an instrument, document or related attachment is written wholly or in part in a language other than English there shall be produced with the instrument, document or related attachment a translation into English, together with an affidavit by the translator stating that he understands both languages and has carefully compared the translation with the original and that the translation is in all respects a true and correct translation.

Registration  
of instruments  
and documents  
in French  
language

38a.—(1) Notwithstanding section 38, where an instrument, document or related attachment is in a prescribed form, the instrument may be registered or the document deposited if,

- (a) the instrument or document affects the title to land in a registry division or part thereof that is designated by regulation; and
- (b) the instrument or document is otherwise acceptable for registration or deposit.

Regulations

(2) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the forms of instruments, documents and related attachments for the purposes of this section;
- (b) prescribing a lexicon of French-English terms to be used in connection with the prescribed forms of instruments, documents and related attachments and deeming the corresponding forms of expression in the lexicon to have the same effect in law;
- (c) designating registry divisions or parts thereof for the purpose of this section;
- (d) prescribing terms and conditions for the registration of instruments or deposit of documents under subsection (1);
- (e) designating any Act for the purpose of subsection (4).

## Loi sur l'enregistrement des actes

L.R.O. 1980, c. 445

et ses modifications à jour, y inclus 1982, c. 46

. . . . .

**38** L'acte, le document ou l'annexe qui y est jointe qui est écrit en totalité ou en partie dans une autre langue que l'anglais doit être accompagné d'une traduction anglaise au moment de sa production. La traduction anglaise est accompagnée d'une déclaration sous serment du traducteur portant qu'il comprend l'une et l'autre langue, qu'il a soigneusement comparé le texte traduit avec le texte original et que le texte traduit est sous tous les rapports une traduction exacte et fidèle. 1982, chap. 46, art. 1, *en partie*.

Enregistrement  
d'actes faits en  
d'autres langues  
que l'anglais

**38a** (1) Par dérogation à l'article 38, l'acte, le document ou l'annexe qui est rédigé sur une formule prescrite, peut être enregistré ou déposé, selon le cas, dans le cas où :

Enregistrement  
des actes et des  
documents rédi-  
gés en français

a) l'acte ou le document vise le droit de propriété d'un bien-fonds situé en totalité ou en partie, dans une division d'enregistrement désignée par règlement;

b) l'acte ou le document peut, par ailleurs, être enregistré ou déposé.

(2) Le lieutenant-gouverneur en conseil peut, par règlement :

Règlement

a) prescrire des formules d'actes, de documents et d'annexes pour l'application du présent article;

b) prescrire l'emploi du lexique anglais-français qu'il établit dans la rédaction des formules prescrites et déclarer que les équivalents qui y figurent ont la même valeur en droit;

c) désigner, en totalité ou en partie, des divisions d'enregistrement pour l'application du présent article;

d) imposer des conditions à l'enregistrement et au dépôt prévus au paragraphe (1);

e) désigner des lois pour l'application du paragraphe (4).

REGISTRY

Interpre-  
tation

(3) In sections 38 and 38a, "document" has the same meaning as it has in Part II.

Idem

(4) In this section, "prescribed form" means a form prescribed by a regulation made under this section or under any Act designated by a regulation made under clause (2) (e). R.S.O. 1970, c. 409, s.38; 1979, c.94, s.47(1);

.....

## ENREGISTREMENT DES ACTES

(3) Dans les articles 38 et 38a le terme «document» a le sens Définition que lui donne la deuxième partie.

(4) Dans le présent article, l'expression «formule prescrite» Idem s'entend d'une formule prescrite par un règlement pris en application du présent article ou d'une loi que désigne le règlement pris en vertu de l'alinéa (2) e). 1982, chap. 46, art. 1, *en partie*.

. . . . .



# Education Act

R.S.O. 1980, c. 129

with amendments to date, including 1982, c. 32

. . . . .

8.—(1) The Minister may,

. . . . .

Powers of  
Minister:

- (y) permit a board to establish for English-speaking pupils programs involving varying degrees of the use of the French language in instruction, provided that programs in which English is the language of instruction are made available to pupils whose parents desire such programs for their children. 1976, c. 50, s. 2 (3).

discretion to  
establish  
French-  
language  
programs for  
English-  
speaking  
pupils

. . . . .

10.—(1) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations in respect of schools or classes established under this Act, or any predecessor of this Act, and with respect to all other schools supported in whole or in part by public money,

Regulations

. . . . .

- 19. prescribing the language or languages in which any subject or subjects shall be taught in any year of the primary, junior, intermediate or senior division; 1974, c.109, s.10(1); 1980, c.61, s.3.

. . . . .

language of  
instruction

40.—(1) Subject to subsections (2) and (3), a person who is qualified to be a resident pupil of a secondary school district has the right to attend any secondary school,

Resident  
pupil

- (a) that is more accessible to him than any secondary school in the secondary school district of which he is qualified to be a resident pupil;
- (b) to take, for the purpose of obtaining the secondary school honour graduation diploma, a subject or subjects not available in the secondary school district of which he is qualified to be a resident pupil but required by him for admission to any university or teacher-training course or for entry into any trade, profession or calling;

## Loi sur l'éducation

L.R.O. 1980, c. 129

et ses modifications à jour, y inclus 1982, c. 32

. . . . .

8 (1) Le ministre peut :

. . . . .

- y) permettre à un conseil de créer, au bénéfice des élèves anglophones, des programmes qui prévoient, à des degrés divers, l'utilisation du français comme langue d'enseignement, pourvu que des programmes ayant l'anglais comme langue d'enseignement soient offerts aux élèves dont les parents le désirent; L.R.O. 1980, chap. 129, al. 8 (1) s) à y);

Pouvoirs du  
ministre :

pouvoir discrétionnaire de créer des programmes enseignés en français pour les élèves anglophones

. . . . .

10 (1) Sous réserve de l'approbation du lieutenant-gouverneur en conseil, le ministre peut prendre des règlements relatifs aux écoles ou aux classes ouvertes aux termes de la présente loi ou d'une loi que celle-ci remplace et aux autres écoles financées en tout ou en partie par les deniers publics pour :

Règlements

. . . . .

19. déterminer la ou les langues d'enseignement pour une ou plusieurs matières des cycles élémentaire, moyen, intermédiaire ou supérieur; L.R.O. 1980, chap. 129, al. 10 (1) 12 à 23;

. . . . .

40 (1) Sous réserve des paragraphes (2) et (3), la personne qui satisfait aux conditions requises pour être élève résident d'un district d'écoles secondaires a le droit de fréquenter n'importe quelle école secondaire :

langue d'enseignement

- a) qui lui est plus accessible qu'une autre école secondaire du district d'écoles secondaires pour lequel elle satisfait aux conditions d'élève résident;

Élève résident

- b) pour y suivre des cours, afin d'obtenir le diplôme d'études secondaires supérieures, dans une ou plusieurs matières qui ne sont pas offertes dans le district d'écoles secondaires pour lequel elle satisfait aux conditions d'élève résident, mais lui sont nécessaires pour être admise à une université, pour suivre un cours de formation des enseignants ou pour être membre d'un corps de métier ou d'une profession;

EDUCATION

- (c) to take a program of study that includes the subject of French for French-speaking pupils in the intermediate or senior division and that is not available in the secondary school district of which he is qualified to be a resident pupil, where such program of study is required by him for admission to any university or teacher-training course or college of applied arts and technology or for entry into any trade, profession or calling; or
- (d) to take a program in a French-language school or class if a French-language school or class is not provided by the board of the secondary school district of which he is qualified to be a resident pupil.

Restrictions

(2) Subsection (1) applies to a person who is qualified to be a resident pupil of a secondary school district only if the appropriate supervisory officer certifies that there is adequate accommodation for him in the school.

Where agreement between boards

(3) Clauses (1) (b) (c) and (d) do not apply to a person who is qualified to be a resident pupil of a secondary school district if the board of the secondary school district has entered into an agreement with another secondary school board under section 163 and the programs and subjects referred to in such clauses are offered in the schools covered by the agreement. 1976, c. 50, s. 5; 1982, c.32, s. 11.

. . . . .

Duties of boards:

149. Every board shall,

. . . . .

special education programs and services

- 7. before the 1st day of September, 1985, provide or enter into an agreement with another board to provide in accordance with the regulations special education programs and special education services for its exceptional pupils in the English language or, where the pupil is enrolled in a school or class established under Part XI, the French language, as the case may be; 1974, c.109, s.146; 1976, c.50, s.21; 1980, c.61, s. 17.

. . . . .



ÉDUCATION

- c) pour y suivre un programme d'études qui comprend l'étude du français pour des élèves francophones des cycles intermédiaire ou supérieur et qui n'est pas offert dans le district d'écoles secondaires pour lequel elle satisfait aux conditions d'élève résident, si ce programme lui est nécessaire pour être admise à une université ou à un collège d'arts appliqués et de technologie, pour suivre un cours de formation des enseignants ou pour être membre d'un corps de métier ou d'une profession;
- d) pour y suivre un programme dans une école ou une classe de langue française si le conseil de district d'écoles secondaires pour lequel elle satisfait aux conditions d'élève résident ne met pas à sa disposition une école ou classe de ce genre. L.R.O. 1980, chap. 129, par. 40 (1); 1982, chap. 32, art. 11.

(2) Le paragraphe (1) s'applique à la personne qui satisfait aux conditions requises pour être élève résident d'un district d'écoles secondaires uniquement si l'agent de supervision intéressé atteste que l'école dispose de possibilités d'accueil appropriées.

Restrictions

(3) Les alinéas (1) b), c) et d) ne s'appliquent pas à la personne qui satisfait aux conditions requises pour être élève résident d'un district d'écoles secondaires si le conseil de ce district a conclu une entente avec un autre conseil d'écoles secondaires aux termes de l'article 163 et que les écoles parties à l'entente offrent ces matières et ces programmes. L.R.O. 1980, chap. 129, par. 40 (2) et (3).

Entente entre conseils

. . . . .

149 Le conseil exerce les fonctions suivantes :

Fonctions du conseil :

. . . . .

- 7. prévoir ou conclure, avant le 1<sup>er</sup> septembre 1985, une entente avec un autre conseil pour offrir aux élèves en difficulté des programmes d'enseignement et des services en anglais conformément aux règlements ou, si l'élève est inscrit dans une classe ou une école créée aux termes de la onzième partie, en français, selon le cas; L.R.O. 1980, chap.129, art.149; 1982, chap.32, art. 39.

programmes d'enseignement et services destinés à l'enfance en difficulté

. . . . .



EDUCATION

*Special Education Advisory Committee*

182

. . . . .

Advisory  
committee

(2) Every board shall, subject to subsection (6), establish a special educational advisory committee that shall consist of,

- (a) one representative from each of the local associations, not to exceed twelve, in the area of jurisdiction of the board, as nominated by the local association and appointed by the board;
- (b) where the board provides a French-language instructional unit as defined in clause 260 (c), one or more members who are French-speaking appointed by the board as representative of the French-speaking ratepayers or supporters of the board;
- (c) where the board provides English-language schools or classes under sections 258 and 272, one or more members who are English-speaking appointed by the board as representative of the English-speaking ratepayers or supporters of the board; and
- (d) three members appointed by the board from among its members,

and, in addition to the members referred to in clauses (a), (b), (c) and (d), the board may appoint one or more additional members who are not representative of either a local association or the French-speaking community and are not members of the board or of a committee of the board. 1980, c.61, s.20.

. . . . .

Duties of  
teacher,

235.—(1) It is the duty of a teacher and a temporary teacher

. . . . .

language of  
instruction

- (f) in instruction and in all communications with the pupils in regard to discipline and the management of the school,
- (i) to use the English language, except where it is impractical to do so by reason of the pupil not understanding English, and except in respect of instruction in a language other than English when such other language is being taught as one of the subjects in the course of study, or

## ÉDUCATION

*Comité consultatif pour l'enfance en difficulté*

182

. . . . .

(2) Le conseil doit, sous réserve du paragraphe (6), créer un comité consultatif pour l'enfance en difficulté qui comprend :

Comité consultatif

- a) un représentant de chacune des associations locales, dont le nombre ne doit pas dépasser douze, du secteur qui relève de la compétence du conseil et qui est désigné par l'association locale et nommé par le conseil;
- b) un ou plusieurs membres francophones nommés par le conseil à titre de représentants des contribuables francophones du conseil si ce dernier crée un module scolaire de langue française au sens de la définition «module scolaire de langue française» de l'article 260;
- c) un ou plusieurs membres anglophones nommés par le conseil à titre de représentants des contribuables anglophones du conseil si ce dernier crée des classes ou des écoles où l'anglais est la langue d'enseignement aux termes des articles 258 et 272;
- d) trois membres nommés par le conseil et choisis parmi ses membres.

Outre les membres visés aux alinéas a), b), c) et d), le conseil peut nommer un ou plusieurs autres membres qui ne représentent ni une association locale ni la communauté francophone et qui ne sont pas membres du conseil ou d'un de ses comités.

L.R.O. 1980, chap.129, par.182(2).

. . . . .

235 (1) L'enseignant, même temporaire, doit exercer les fonctions suivantes :

Fonctions de l'enseignant :

. . . . .

- f) pour l'enseignement et les communications avec les élèves en ce qui concerne la discipline et le fonctionnement de l'école :

langue d'enseignement

- (i) utiliser l'anglais, sauf lorsque l'emploi de cette langue est impossible du fait que l'élève ne comprend pas l'anglais et sauf à l'égard de l'enseignement dans une langue autre que l'anglais quand cette autre langue est une des matières figurant au programme d'études,

EDUCATION

- (ii) to use the French language in schools or classes in which French is the language of instruction except where it is impractical to do so by reason of the pupil not understanding French, and except in respect of instruction in a language other than French when such other language is being taught as one of the subjects in the course of study; 1974, c. 109, s.229; 1982, c.32, s.58.

. . . . .

Appointment  
of super-  
visory  
officers

255.—(1) Where a board appoints one or more supervisory officers, the board,

. . . . .

- (b) shall appoint an English-speaking supervisory officer for schools and classes where English is the language of instruction, and a French-speaking supervisory officer for schools and classes where French is the language of instruction, or shall arrange with another board or with the Minister for the services of an English-speaking supervisory officer or a French-speaking supervisory officer where such officer is not appointed by the board; 1974, c. 109, s. 249.

. . . . .

FRENCH LANGUAGE INSTRUCTION

*Elementary*

French-  
language  
elementary  
schools  
and classes

258.—(1) A board of education, public school board or separate school board may establish and maintain elementary schools or classes in elementary schools, including kindergarten and junior kindergarten classes, for the purpose of providing for the use of the French language in instruction of French-speaking pupils. 1974, c. 109, s. 252 (1); 1976, c. 50, s. 33.



ÉDUCATION

- (ii) utiliser le français dans les écoles ou les classes où le français est la langue d'enseignement, sauf lorsqu'il est impossible d'utiliser cette langue du fait que l'élève ne comprend pas le français et sauf à l'égard de l'enseignement dans une langue autre que le français quand cette autre langue est une des matières figurant au programme d'études; L.R.O. 1980, chap.129, par.235(1); 1982, chap.32, art.58.

. . . . .

255 (1) S'il nomme un ou plusieurs agents de supervision, le conseil :

Nomination des agents de supervision

. . . . .

- b) doit nommer un agent de supervision anglophone pour les classes et les écoles où l'anglais est la langue d'enseignement et un agent de supervision francophone pour les classes et les écoles où le français est la langue d'enseignement; sinon, il doit prendre les dispositions nécessaires avec un autre conseil ou avec le ministre pour obtenir les services d'un agent de supervision anglophone ou francophone si ce dernier n'est pas nommé par le conseil; L.R.O. 1980, chap. 129, art. 255.

. . . . .

ENSEIGNEMENT EN FRANÇAIS

*Enseignement primaire*

258 (1) Le conseil de l'éducation, le conseil d'écoles publiques ou le conseil d'écoles séparées peut ouvrir des classes ou des écoles au palier primaire et en assurer le fonctionnement, y compris des classes maternelles et prématernelles, dans le but de dispenser un enseignement en langue française aux élèves francophones. L.R.O. 1980, chap. 129, par. 258 (1).

Enseignement primaire en langue française



## EDUCATION

French-language  
classes

- (2) Where on or after the first school day in September and on or before the 1st day of April next following, written evidence is presented to a board referred to in subsection (1) that a number of French-speaking pupils resident in the school section or separate school zone have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty-five or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day of the following school year.

## Idem

- (3) Where the evidence referred to in subsection (2) is presented to the board after the 1st day of April and before the first school day in September next following, the board shall make the determination required under subsection (2) and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty-five or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups.

French-language  
schools

- (4) Where a board referred to in subsection (1) provides or is required to provide for the use of the French language in instruction and in the opinion of the board the number of pupils who elect to be taught in the French language so warrants, the board shall provide a French-language elementary school.

English as  
subject of  
instruction

- (5) Notwithstanding subsections (1), (2), (3) and (4), English may be a subject of instruction in any grade and shall be a subject of instruction in Grade 5 and all subsequent grades in an elementary school.

Admission  
of pupils  
other than  
French-  
speaking  
pupils

- (6) A board, on the request of the parent or guardian of an English-speaking pupil of the board, or of the pupil where he is an adult, may admit the pupil to a class formed under subsection (1), (2) or (3) or to a school provided under subsection (4) if his admission is approved by majority vote of an admissions committee appointed by the board, and composed of the principal of the school to which admission is requested, a teacher who uses the French language in instruction in such school and, subject to subsection (7), a French-speaking supervisory officer employed by the board.

## ÉDUCATION

(2) Si, après la rentrée des classes de septembre et au plus tard le 1<sup>er</sup> avril suivant, une preuve écrite est présentée à un conseil mentionné au paragraphe (1) précisant qu'un certain nombre d'élèves francophones résidant dans la circonscription scolaire ou dans la zone d'écoles séparées ont choisi de recevoir leur enseignement en français, le conseil doit immédiatement décider si les élèves de langue française peuvent être regroupés à cette fin dans une ou plusieurs classes ou groupes de vingt-cinq élèves ou plus. Si le conseil juge qu'un tel regroupement est possible, il dispense l'enseignement en français à ces classes ou à ces groupes à compter de la rentrée des classes de l'année scolaire suivante. L.R.O. 1980, chap. 129, par. 258 (2); 1982, chap. 32, art. 61.

Classes de langue française

(3) Si la preuve mentionnée au paragraphe (2) est présentée au conseil après le 1<sup>er</sup> avril et avant la rentrée des classes du mois de septembre suivant, le conseil prend la décision exigée aux termes du paragraphe (2). Si le conseil décide que les élèves francophones peuvent être regroupés par classes ou groupes de vingt-cinq ou plus afin de recevoir l'enseignement en français, il peut, à compter du premier jour de classe de janvier de l'année suivante, et doit, à compter du premier jour de classe de septembre de cette année-là, dispenser l'enseignement en français à ces classes ou groupes.

Idem

(4) Si un conseil mentionné au paragraphe (1) dispense ou est tenu de dispenser l'enseignement en français et que, de l'avis du conseil, le nombre d'élèves qui choisissent de recevoir l'enseignement en français est justifié, le conseil prévoit une école primaire où l'enseignement est dispensé en français.

École de langue française

(5) Par dérogation aux paragraphes (1), (2), (3) et (4), l'anglais peut être une matière au programme de n'importe quelle année et doit figurer au programme de la 5<sup>e</sup> année et des années suivantes dans les écoles primaires.

L'anglais en tant que matière

(6) À la demande du père, de la mère ou du tuteur d'un élève anglophone du conseil, ou de l'élève lui-même s'il est majeur, le conseil peut admettre cet élève à une classe ouverte aux termes des paragraphes (1), (2) ou (3) ou à une école prévue aux termes du paragraphe (4), si son admission est approuvée à la majorité des voix par les membres du comité d'admission constitué par le conseil et composé du directeur de l'école où la demande d'inscription a été faite, d'un enseignant qui dispense son enseignement en français dans cette école et, sous réserve du paragraphe (7), d'un agent de supervision francophone à l'emploi du conseil.

Admission d'élèves non francophones



## EDUCATION

Where board  
has no  
French-  
speaking  
supervisory  
officer

(7) Where a board does not employ a French-speaking supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee.

English-  
language  
schools or  
classes

(8) Where a board has provided one or more French-language elementary schools under subsection (4) and a number of pupils of the board elect to be taught in the English language, subsections (1), (2) and (3) apply with necessary modifications in respect of provision for the use of the English language in instruction. 1974, c. 109, s. 252 (2-8); 1982, c.32, s.61.

Duties and  
responsibili-  
ties of  
advisory  
committee  
in public  
schools

259. Where a board of education has established a French-language advisory committee under section 262, or an English-language advisory committee under section 272, the committee has the same duties and responsibilities in respect of the French-language schools and classes or English-language schools and classes, as the case may be, that are provided in the public schools operated by the board of education as it has in respect of French-language instructional units or English-language schools and classes, as the case may be, for secondary school purposes. 1974, c. 109, s. 253.

*“Secondary*

Interpre-  
tation

260. In sections 261 to 277,

- (a) “board” means a board of education;
- (b) “committee” means a French-language advisory committee formed under section 262;
- (c) “French-language instructional unit” means a class, group of classes, or school in which French is the language of instruction;
- (d) “ratepayer” in respect of a board means a person entitled to vote at an election of members of the board 1974, c. 109, s. 254

French-  
language  
schools or  
classes

261.—(1) A board may establish and maintain secondary schools or classes in secondary schools for the purpose of providing for the use of the French language in instruction of French-speaking pupils, or may enter into an agreement with another board to provide for the admission of resident pupils of the first-mentioned board to one or more French-language instructional units operated by such other board. 1974, c. 109, s. 255 (1); 1976, c. 50, s. 34.

## ÉDUCATION

(7) Si le conseil n'emploie pas d'agent de supervision francophone, il doit prendre les mesures nécessaires pour qu'un agent de supervision francophone employé par un autre conseil ou par le ministre agisse comme membre du comité d'admission.

Si le conseil n'a pas d'agent de supervision francophone

(8) Si le conseil a prévu une ou plusieurs écoles primaires de langue française et qu'un certain nombre d'élèves relevant du conseil choisissent de recevoir l'enseignement en anglais, les paragraphes (1), (2) et (3) s'appliquent, avec les adaptations de circonstance, en ce qui concerne l'utilisation de l'anglais comme langue d'enseignement. L.R.O. 1980, chap. 129, par. 258 (3) à (8).

Écoles ou classes de langue anglaise

**259** Si le conseil de l'éducation a créé un comité consultatif de langue française aux termes de l'article 262 ou un comité consultatif de langue anglaise aux termes de l'article 272, le comité exerce les mêmes fonctions et assume les mêmes responsabilités à l'égard des écoles et des classes de langue française ou de langue anglaise, selon le cas, prévues dans les écoles publiques qui relèvent du conseil de l'éducation qu'à l'égard des modules scolaires de langue française ou des écoles et des classes de langue anglaise, selon le cas, aux fins des écoles secondaires. L.R.O. 1980, chap. 129, art. 259.

Fonctions et responsabilités des comités consultatifs aux fins des écoles publiques

*Enseignement secondaire*

**260** Les définitions qui suivent s'appliquent aux articles 261 à 277.

Définitions

«comité» Comité consultatif de langue française créé aux termes de l'article 262.

«conseil» Conseil de l'éducation.

«contribuable» À l'égard d'un conseil, personne qui a le droit de voter lors de l'élection des membres du conseil.

«module scolaire de langue française» Classe, groupe de classes ou école où le français est la langue d'enseignement. L.R.O. 1980, chap. 129, art. 260.



## EDUCATION

French-  
language  
schools

- (2) Where on or after the first school day in September and on or before the 1st day of April next following, written evidence is presented to a board that a number of French-speaking pupils resident in the secondary school district have elected to be taught in the French language, the board shall forthwith determine whether French-speaking pupils can be assembled for this purpose in one or more classes or groups of twenty or more and, where the board determines that such pupils can be so assembled, it shall provide for the use of the French language in instruction in such classes or groups commencing on the first school day in the following school year.

Idem

- (3) Where the evidence referred to in subsection (2) is presented to the board after the 1st day of April and before the first school day in September next following, the board shall make the determination required under subsection (2) and, where the board determines that French-speaking pupils can be assembled in classes or groups of twenty or more for the use of the French language in instruction, the board may, commencing on the first school day in January of the following year, and shall, commencing on the first school day in September of such following year, provide for the use of the French language in instruction in such classes or groups.

French-  
language  
secondary  
schools

- (4) Where a board provides or is required to provide for the use of the French language in instruction in one or more classes in a secondary school and in the opinion of the board the number of French-speaking pupils who elect to be taught in the French language so warrants, the board shall provide an appropriate unit of a secondary school or, where practicable, a French-language secondary school.

Agreement  
with another  
board

- (5) Where a board determines that the number of French-speaking pupils who elect to be taught in the French language is not sufficient to justify the establishment of a French-language secondary school, the board shall, in respect of the education of such pupils, consider the possibility of entering into an agreement with another board under section 159 or 163. 1974, c. 109, s. 255 (2-5); 1982, c. 32, s. 62.

Establish  
ment of  
committee

**262.—(1) Where,**

- (a) ten or more French-speaking ratepayers of a secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the French language is or is to be used in instruction of French-speaking pupils; or

## ÉDUCATION

**261** (1) Le conseil peut ouvrir des classes ou des écoles dans des écoles secondaires et en assurer le fonctionnement dans le but de dispenser un enseignement en langue française aux élèves francophones, ou il peut conclure une entente avec un autre conseil en vue de permettre l'inscription des élèves résidents du premier conseil dans un ou plusieurs modules scolaires de langue française qui relèvent du deuxième conseil. L.R.O. 1980, chap. 129, par. 261 (1).

Classes ou écoles  
de langue fran-  
çaise

(2) Si, après la rentrée des classes de septembre et au plus tard le 1<sup>er</sup> avril suivant, une preuve écrite est présentée au conseil précisant qu'un certain nombre d'élèves francophones résidant dans le district d'écoles secondaires ont choisi de recevoir leur enseignement en français, le conseil doit immédiatement décider si les élèves de langue française peuvent être regroupés à cette fin dans une ou plusieurs classes ou groupes de vingt élèves ou plus. Si le conseil juge qu'un tel regroupement est possible, il doit dispenser l'enseignement en français à ces classes ou à ces groupes à compter de la rentrée des classes de l'année scolaire suivante. L.R.O. 1980, chap. 129, par. 261 (2); 1982, chap. 32, art. 62.

École de langue  
française

(3) Si la preuve mentionnée au paragraphe (2) est présentée au conseil après le 1<sup>er</sup> avril et avant la rentrée des classes du mois de septembre suivant, le conseil doit prendre la décision exigée aux termes du paragraphe (2). Si le conseil décide que les élèves francophones peuvent être regroupés par classes ou groupes de vingt ou plus afin de recevoir l'enseignement en français, il peut, à compter du premier jour de classe de janvier de l'année suivante, et doit, à compter du premier jour de classe de septembre de cette année-là, dispenser l'enseignement en français à ces classes ou groupes.

Idem

(4) Si le conseil dispense ou est tenu de dispenser l'enseignement en français dans une ou plusieurs classes d'une école secondaire et que, de l'avis du conseil, le nombre d'élèves francophones qui choisissent de recevoir l'enseignement en français est justifié, le conseil doit prévoir le module qui s'impose dans une école secondaire ou, si la chose est réalisable, une école secondaire de langue française.

École secondaire  
de langue fran-  
çaise

(5) Si le conseil décide que le nombre d'élèves francophones qui choisissent de recevoir l'enseignement en français n'est pas suffisant pour justifier l'ouverture d'une école secondaire de langue française, il doit, à l'égard de l'enseignement de ces élèves, envisager la possibilité de conclure une entente avec un autre conseil aux termes des articles 159 ou 163. L.R.O. 1980, chap. 129, par. 261 (3) à (5).

Entente avec un  
autre conseil

## EDUCATION

- (b) a board establishes or extends or decides to establish or extend a class, group or program in which the French language is or is to be used in instruction of French-speaking pupils,

the board shall, within two months of the application, establishment, extension or decision to establish or extend, by resolution, establish a committee and provide for the holding of elections of members thereof, and such elections shall, subject to subsection (7), be held within such period. 1974, c. 109, s. 256 (1); 1976, c. 50, s. 35.

## Composition

- (2) The committee shall consist of nine members and shall be composed of,

(a) three members of the board appointed by the board; and

(b) six French-speaking ratepayers who are not members of the board but have the qualifications required for members of the board, elected by French-speaking ratepayers of the secondary school district.

## Member of elementary board

- (3) A member of the committee under clause (2) (b) may be a member of an elementary school board.

## Application of s. 206

- (3a) Section 206 applies with necessary modifications to a member of a committee under clause (2) (b); 1982, c.32, s.63(1) .

## Term of office

- (4) A member of a committee shall hold office during the term of the members of the board and until a new board is organized and his successor is appointed or elected, as the case may be 1982, c.32, s.63(2) .

## Apportionment of members

- (5) The board, subject to subsection (8), shall apportion the number of members under clause (2) (b) among the municipalities and the localities, or among parts or groups of such municipalities or localities, within the jurisdiction of the board as nearly as is practicable in the proportion that the number of French-speaking pupils who elect to be taught in the French language from each such municipality, locality or part or group thereof bears to the total number of such pupils within the area of jurisdiction of the board.



## ÉDUCATION

**262 (1) Si :**

- a) au moins dix contribuables francophones d'un district d'écoles secondaires adressent une demande écrite au conseil pour la création ou le développement d'une classe, d'un groupe ou d'un programme dans une école secondaire où le français est ou doit être la langue d'enseignement des élèves francophones;
- b) le conseil crée, développe ou décide de créer ou de développer une classe, un groupe ou un programme où le français est ou doit être la langue d'enseignement des élèves francophones,

Création d'un comité

le conseil doit, dans les deux mois de la demande, de la création, du développement ou de la décision susmentionnée, par voie de résolution, créer un comité et prévoir la tenue d'une élection pour choisir les membres du comité. Ces élections doivent, sous réserve du paragraphe (7), se tenir au cours de ce délai.

**(2) Le comité se compose de neuf membres dont :**

Composition

- a) trois membres du conseil nommés par le conseil;
- b) six contribuables francophones qui ne sont pas membres du conseil mais remplissent les conditions requises pour en être membres et qui sont élus par les contribuables francophones du district d'écoles secondaires.

(3) Un membre du comité aux termes de l'alinéa (2) b) peut être membre du conseil d'écoles primaires. L.R.O. 1980, chap. 129, par. 262 (1) à (3).

Membre du conseil d'écoles primaires

(3a) L'article 206 s'applique, avec les adaptations de circonstance, à un membre du comité aux termes de l'alinéa (2) b). 1982, chap. 32, par. 63 (1).

Champ d'application de l'article 206

(4) Le mandat d'un membre du comité est le même que celui des membres du conseil et expire lorsqu'un nouveau conseil est organisé et que le successeur du membre est nommé ou élu, selon le cas. L.R.O. 1980, chap. 129, par. 262 (4); 1982, chap. 32, par. 63 (2).

Mandat



## EDUCATION

Meetings  
of French-  
speaking  
ratepayers  
to elect  
committee  
members

(6) The board shall make provision for a meeting of its French-speaking ratepayers in respect of each area to which one or more members are apportioned under subsection (5) for the purpose of electing such member or members to the committee, and shall advertise in each of its schools and in the public media serving the local population, the place, date and time of the meeting, and take such additional action to publicize the meeting as it considers expedient.

Idem

(7) Where the election of members of a committee under subsection (1) would otherwise be held within three months before the date of the regular election of members of the board, the election required under subsection (1) shall be held in accordance with section 263. 1974, c. 109, s. 256 (2-7); 1982, c. 32, s. 63.

Consultation  
with  
committee re  
apportion-  
ment

(8) For the purpose of the second and subsequent elections of members to a committee, the board shall consult with the committee before making the apportionment referred to in subsection (5) and shall make such apportionment on or before the 1st day of November in the year of a regular election of the board. 1974, c. 109, s. 256 (8); 1978, c. 44, s. 22.

263.—(1) Where a committee has been established and a new board has been elected, a meeting provided under subsection 262 (6) to elect a member or members to the committee shall be held not later than ten days following the first meeting of the newly-elected board commencing at 8 o'clock in the afternoon on such date and at such place as the board may determine, and such meeting may also consider any other matters brought before it, and the provisions of subsection 262 (6) respecting the publicizing of the meeting apply. 1974, c. 109, s. 257; 1978, c. 44, s. 23.

French-  
speaking  
ratepayers  
to elect  
subsequent  
members to  
committee

Idem

(2) The members of the committee to be appointed by the board shall be appointed not later than the date of the election meeting referred to in subsection (1); 1982, c. 32, s. 64.

Election of  
chairman of  
meeting

264.—(1) The secretary of the board or a person appointed by the board shall call to order each meeting of French-speaking ratepayers under sections 262 and 263 and shall preside thereat for the purpose of electing a chairman of the meeting.

## ÉDUCATION

(5) Le conseil, sous réserve du paragraphe (8), répartit le nombre des membres prévu aux termes de l'alinéa (2) b) entre les municipalités et les localités, ou parties ou groupes de celles-ci, sur lesquelles il exerce sa compétence, d'une façon qui se rapproche le plus possible du rapport qui existe entre le nombre d'élèves francophones qui choisissent de recevoir l'enseignement en français de la part de chacune de ces municipalités, localités ou parties ou groupes de celles-ci, et le nombre total des élèves qui relèvent de la compétence du conseil.

Répartition des membres

(6) Le conseil prévoit une assemblée de ses contribuables francophones à l'égard de chacun des secteurs comptant un ou plusieurs membres d'après la répartition effectuée aux termes du paragraphe (5) aux fins de l'élection des membres du comité. Il doit annoncer dans ses écoles et dans les media d'information de la population locale, les lieu, date et heure de l'assemblée et prendre les mesures supplémentaires nécessaires pour annoncer l'assemblée.

Assemblée des contribuables francophones en vue de l'élection des membres du comité

(7) Si l'élection des membres du comité aux termes du paragraphe (1) devrait par ailleurs se tenir dans les trois mois qui précèdent la date de l'élection ordinaire des membres du conseil, l'élection exigée aux termes du paragraphe (1) doit se tenir conformément à l'article 263.

Idem

(8) Aux fins de la deuxième élection et des élections suivantes des membres du comité, le conseil consulte le comité avant de procéder à la répartition mentionnée au paragraphe (5). Il procède à cette répartition au plus tard le 1<sup>er</sup> novembre de l'année où se tient une élection ordinaire du conseil. L.R.O. 1980, chap. 129, par. 262 (5) à (8).

Consultation du comité relativement à la répartition

**263** (1) Si un comité a été créé et qu'un nouveau conseil a été élu, l'assemblée prévue aux termes du paragraphe 262 (6) en vue de l'élection d'un ou des membres du comité se tient au plus tard dix jours après la première réunion du conseil nouvellement élu à compter de 20 heures, aux date et lieu que peut choisir le conseil; cette assemblée peut également étudier d'autres questions qui lui sont soumises. Les dispositions du paragraphe 262 (6) relatives à l'annonce de l'assemblée s'appliquent. L.R.O. 1980, chap. 129, art. 263.

Élection des membres additionnels du comité par les contribuables francophones

(2) Les membres du comité qui doivent être nommés par le conseil sont nommés au plus tard à la date de l'assemblée tenue en vue d'une élection mentionnée au paragraphe (1). 1982, chap. 32, art. 64.

Idem

## EDUCATION

Secretary of  
meeting

(2) The chairman of a meeting shall appoint a secretary who shall record the proceedings of the meeting and perform such other duties as are required by the chairman.

Procedure  
at meeting

(3) The chairman of a meeting shall conduct the election of the member or members of the committee to be elected at such meeting and shall submit all motions to the meeting in the manner desired by the majority, and the chairman is entitled to vote on any motion and, in the case of an equality of votes with respect to the election of a member of the committee, the chairman shall provide for drawing lots to determine which of the candidates is elected and a motion on which there is an equality of votes is lost.

Notice of  
result  
of election

(4) Notice in writing shall be given by the secretary of a meeting to the secretary of the board designating by their names and addresses the person or persons elected as members of the committee. 1974, c. 109, s. 258.

Chairman  
and vice-  
chairman of  
committee

**265.**—(1) At the first meeting of the committee, the members shall elect from among themselves a chairman and a vice-chairman.

## Quorum

(2) A majority of the members of the committee constitutes a quorum, and the vote of a majority of the members present at a meeting is necessary to bind the committee.

Vote of  
chairman,  
equality of  
votes

(3) On every motion, the chairman may vote, and a motion on which there is an equality of votes is lost.

Special  
meeting

(4) A special meeting of the committee may be called by the chairman of the committee and shall be called by the chairman upon the request in writing of two members of the committee who shall specify the objects for which the meeting is to be held, and the objects shall be stated in the notice calling the meeting. 1974, c. 109, s. 259

## Vacancies

**266.**—(1) Every vacancy on a committee for any cause shall be filled by appointment by the board in the case of appointed members and by the elected members of the committee in the case of elected members and every person so appointed shall hold office for the unexpired term of the member whose seat has become vacant. 1974, c. 109, s. 260.

Application of  
s. 197 (3)

(2) Subsection 197 (3) applies with necessary modifications to the resignation of a member of a committee. 1982, c. 32, s. 65.



## ÉDUCATION

- 264** (1) Le secrétaire du conseil ou la personne nommée par le conseil convoque les assemblées des contribuables francophones aux termes des articles 262 et 263 et les préside aux fins de l'élection du président de séance. Élection du président de séance
- (2) Le président de séance nomme un secrétaire chargé de rédiger le procès-verbal de l'assemblée et de s'acquitter des autres fonctions exigées par le président. Secrétaire de séance
- (3) Le président de séance dirige l'élection d'un ou des membres du comité qui doivent être élus lors de cette assemblée et soumet les motions à l'assemblée de la manière voulue par la majorité. Il a le droit de voter sur les motions et, en cas de partage des voix concernant l'élection d'un membre du comité, il procède au tirage au sort afin de déterminer le candidat élu. En cas de partage des voix sur une motion, celle-ci est rejetée. Procédure lors de l'assemblée
- (4) Le secrétaire de séance remet au secrétaire du conseil un avis écrit indiquant le nom et l'adresse de la ou des personnes élues comme membres du comité. L.R.O. 1980, chap. 129, art. 264. Avis du résultat de l'élection
- 265** (1) Lors de la première réunion du comité, les membres élisent un président et un vice-président choisis parmi les membres du comité. Président et vice-président du comité
- (2) La majorité des membres du comité constitue le quorum. Le vote de la majorité des membres présents à une réunion est nécessaire pour lier le comité. Quorum
- (3) Le président peut voter sur chaque motion. En cas de partage des voix, la motion est rejetée. Vote du président en cas de partage des voix
- (4) Une réunion extraordinaire du comité peut être convoquée par le président du comité et doit l'être sur demande écrite de deux membres du comité, qui doivent préciser les raisons de la convocation de la réunion. Ces raisons doivent être énoncées dans l'avis de convocation de la réunion. L.R.O. 1980, chap. 129, art. 265. Réunion extraordinaire
- 266** (1) La vacance qui survient au sein du comité et qui résulte d'une cause quelconque doit être comblée par une nomination faite par le conseil dans le cas de membres nommés, et par les membres élus du comité dans le cas de membres élus. Chacune des personnes ainsi nommées demeure en fonction jusqu'à l'expiration du mandat du membre qu'elle remplace. L.R.O. 1980, chap. 129, art. 266. Vacance
- (2) Le paragraphe 197 (3) s'applique, avec les adaptations de circonstance, à la démission d'un membre du comité. 1982, chap. 32, art. 65. Champ d'application du par. 197 (3)



## EDUCATION

Recommendations

**267.**—(1) A committee is responsible for developing proposals designed to meet the educational and cultural needs of the French-speaking pupils and the French-speaking community and for such purpose may make recommendations in respect of,

- (a) the provision of suitable sites, accommodation and equipment;
- (b) the establishment, operation and management of French-language instructional units;
- (c) the use of the French language and of the English language in French-language instructional units;
- (d) the recruitment and appointment of the required teaching, supervisory and administrative personnel;
- (e) the establishment of the course of study and the use of textbooks;
- (f) the development and establishment of special education programs;
- (g) the establishment of attendance areas for French-language instructional units;
- (h) the provision of transportation for pupils;
- (i) the entering into agreements with other boards in respect of the provision of instruction in the French language and supervisory and consultative services;
- (j) the provision of board, lodging, and transportation for pupils;
- (k) the development and establishment of adult education programs;
- (l) the use of any facility and means necessary to meet the educational and cultural needs of the French-speaking community;
- (m) the provision of summer school programs; and
- (n) any other matter pertaining to French-language education for French-speaking pupils.

Committee report to board

(2) The committee shall report at each regular meeting of the board.

## ÉDUCATION

**267** (1) Le comité est chargé de préparer des recommandations susceptibles de répondre aux besoins d'ordre éducatif et culturel des élèves francophones et de la communauté francophone. À cette fin, il peut faire des recommandations concernant :

Recommandations

- a) l'acquisition d'emplacements, de locaux et d'équipement adéquats;
- b) la création, le fonctionnement et la gestion de modules scolaires de langue française;
- c) l'emploi du français et de l'anglais dans les modules scolaires de langue française;
- d) le recrutement et la nomination des enseignants et du personnel chargé de la supervision et de l'administration;
- e) la préparation du programme d'études et l'utilisation des manuels;
- f) l'élaboration et la mise en oeuvre de programmes d'enseignement à l'enfance en difficulté;
- g) la création de secteurs de fréquentation scolaire pour les modules scolaires de langue française;
- h) le transport des élèves;
- i) la conclusion d'ententes avec d'autres conseils en vue de dispenser l'enseignement en français et de fournir des services de supervision et de consultation;
- j) les repas, le logement et le transport des élèves;
- k) l'élaboration et la mise en oeuvre de programmes d'enseignement à l'intention des adultes;
- l) l'utilisation des installations et des moyens nécessaires pour répondre aux besoins d'ordre éducatif et culturel de la communauté francophone;
- m) la mise en oeuvre de programmes de cours d'été;
- n) d'autres questions relatives à l'enseignement en français dispensé aux élèves francophones.

(2) Le comité fait un rapport à chaque réunion ordinaire du conseil.

Rapport du comité au conseil

## EDUCATION

Board to  
seek advice  
of committee

(3) The board shall seek the advice of the committee on all matters affecting the establishment, program, administration and termination of French-language instructional units before any final decision regarding such matters is taken by the board and shall provide adequate accommodation and staff to implement the decision of the board.

Considera-  
tion of  
recommenda-  
tions by  
board

(4) The board shall consider any recommendation submitted to it in writing by the committee and shall not refuse its approval without having given the committee an opportunity to be heard by the board or by any committee of the board to which such recommendation is referred and, where a board refuses a recommendation of the committee, it shall, within thirty days after receiving the recommendation of the committee, forward to the committee written reasons for its refusal.

Referral by  
committee  
to Languages  
of Instruction  
Commission

(5) Upon receipt of a refusal and the reasons therefor under subsection (4), the committee may, by motion, refer the matter to the Languages of Instruction Commission of Ontario, in which case it shall send to the Commission and to the board copies of the motion, the recommendation of the committee and the written reasons of the board for its refusal. 1974, c. 109, s. 261.

Attendance  
of committee  
chairman at  
board com-  
mittee  
meeting

268.—(1) The chairman of the committee or a member of the committee designated by him may attend any meeting of a committee of the board and shall be given the opportunity to be heard at such meeting in respect of any matter that affects French-speaking pupils and that is within the jurisdiction of such committee of the board.

Distribution  
of administra-  
tive  
materials

(2) Notices, agendas and minutes in respect of meetings of the board shall be distributed to members of the committee together with such supporting documents as may be agreed upon by the board and the committee.

Formation  
of sub-  
committees

(3) The committee may, at its discretion, form sub-committees to assist it in its work.

Committee  
may hold  
public  
meetings

(4) The committee may hold such public meetings to report upon its work as it considers necessary or desirable. 1974, c. 109, s. 262.

Resources  
and services  
to be provided  
by board

269.—(1) The board shall make available to the committee the resources and services provided for a committee of the board.

Annual  
report of  
committee

(2) The chairman of the committee shall cause to be prepared in French and English an annual report, and the report shall be included in that of the board where the board publishes a report.



## ÉDUCATION

- (3) Le conseil demande l'avis du comité sur les questions qui touchent à la création, au programme, à la gestion et à l'abandon des modules scolaires de langue française avant qu'une décision définitive relative à ces questions soit prise par le conseil. Il fournit les locaux et le personnel nécessaires pour faire appliquer sa décision.
- Le conseil demande l'avis du comité
- (4) Le conseil étudie la recommandation présentée par écrit par le comité et ne refuse pas son approbation sans avoir donné au comité l'occasion de se faire entendre par le conseil ou par un comité du conseil auquel cette recommandation est renvoyée. Si le conseil refuse la recommandation du comité, il doit, dans un délai de trente jours après réception de cette recommandation, fournir au comité les motifs écrits de son refus.
- Étude des recommandations par le conseil
- (5) À la réception d'un refus et des motifs de ce refus aux termes du paragraphe (4), le comité peut, par voie de motion, renvoyer l'affaire devant la Commission des langues d'enseignement de l'Ontario, auquel cas il envoie à la Commission et au conseil des copies de la motion, de la recommandation du comité et des motifs écrits du refus du conseil. L.R.O. 1980, chap. 129, art. 267.
- Renvoi par le comité à la Commission des langues d'enseignement
- 268** (1) Le président du comité ou le membre du comité désigné par le président peut participer à une réunion du comité du conseil et doit pouvoir se faire entendre sur une question qui touche les élèves francophones et qui relève de la compétence de ce comité.
- Présence du président du comité aux réunions du comité du conseil
- (2) Les avis, ordres du jour et procès-verbaux relatifs aux réunions du conseil sont remis aux membres du comité, accompagnés des documents à l'appui comme le conseil et le comité peuvent en convenir.
- Remise des documents administratifs
- (3) Le comité peut, à sa discrétion, créer des sous-comités pour l'aider à s'acquitter de ses fonctions.
- Création de sous-comités
- (4) Le comité peut tenir des assemblées publiques s'il le juge nécessaire ou opportun, pour rendre compte de son travail. L.R.O. 1980, chap. 129, art. 268.
- Droit du comité de tenir des assemblées publiques
- 269** (1) Le conseil met à la disposition du comité les ressources et les services prévus pour les comités du conseil.
- Ressources et services fournis par le conseil
- (2) Le président du comité fait préparer en français et en anglais un rapport annuel qui doit s'intégrer au rapport du conseil si celui-ci en publie un.
- Rapport annuel du comité



## EDUCATION

Services of  
professional  
staff to be  
provided

(3) The committee may, through the chief executive officer of the board, obtain the advice and assistance of such supervisory officers and teachers employed by the board as the committee may request. 1974, c. 109, s. 263.

**270.**—(1) Where a board has determined to pay an allowance to members of the board under subsection 167 (1), the board shall pay to each member of the committee who is not a member of the board an allowance in such amount as is determined by the board.

Attendance  
at meetings  
and  
conferences

(2) The board may authorize a member of the committee to attend on the same basis as a member of the board such conferences and meetings as the board considers necessary or desirable for the effective functioning of the committee, and subsections 167 (3) and (4) apply with necessary modifications to a member of the committee.

Provincial  
association  
membership  
fee

(3) The board shall, on behalf of the members of the committee, pay all or part of a fee required for membership in a provincial association of French-language committees where the committee desires such membership. 1974, c. 109, s. 264; 1982, c.32, s.66.

English or  
Anglais  
as subject  
required in  
grades 9 to 12

**271.** Notwithstanding any other provision in this Part, English or Anglais shall be an obligatory subject of instruction for every pupil of grades 9 to 12 who is enrolled in a French-language school and shall be a required subject for a certificate or diploma issued to such a pupil. 1974, c. 109, s. 265.

English-  
language  
classes  
where  
French-  
language  
school or  
classes  
established

**272.**—(1) Where a board has provided one or more French-language secondary schools and a number of pupils of the board elect to be taught in the English language, section 261 applies with necessary modifications in respect of provision for the use of the English language in instruction.

Establish-  
ment of  
English-  
language  
advisory  
committee

(2) Where the number of English-speaking pupils of a board is fewer than the number of pupils of the board for whom French is the language of instruction and,

- (a) ten or more English-speaking ratepayers of the secondary school district apply in writing to the board for the establishment or extension in a secondary school of a class, group or program in which the English language is or is to be used in instruction; or
- (b) the board establishes or extends or decides to establish or extend a class, group or program in which the English language is or is to be used in instruction,

## ÉDUCATION

(3) Le comité peut, sur demande et par l'intermédiaire du chef de service administratif du conseil, demander l'avis et l'aide des agents de supervision et des enseignants employés par le conseil. L.R.O. 1980, chap. 129, art. 269.

Personnel qualifié  
au service du conseil

**270** (1) Si le conseil a décidé de verser une allocation à ses membres conformément au paragraphe 167 (1), il verse à chaque membre du comité qui ne fait pas partie du conseil une allocation dont il fixe le montant. 1982, chap. 32, art. 66.

Allocation

(2) Le conseil peut autoriser un membre du comité, au même titre qu'un membre du conseil, à assister aux conférences et assemblées que le conseil juge nécessaires ou opportunes pour le bon fonctionnement du comité. Les paragraphes 167 (3) et (4) s'appliquent, avec les adaptations de circonstance, à un membre du comité.

Présence aux as-  
semblées et con-  
férences

(3) Le conseil doit, au nom des membres du comité, verser la totalité ou une partie des cotisations exigées pour l'adhésion à une association provinciale de comités de langue française si le comité opte pour cette adhésion. L.R.O. 1980, chap. 129, par. 270 (2) et (3).

Cotisation à une  
association pro-  
vinciale

**271** Par dérogation aux autres dispositions de la présente partie, l'enseignement de l'English ou l'Anglais est une matière d'enseignement obligatoire pour les élèves de la 9<sup>e</sup> à la 12<sup>e</sup> année qui sont inscrits dans une école de langue française. L'une ou l'autre matière doit être exigée pour l'obtention d'un certificat ou d'un diplôme décerné à ces élèves. L.R.O. 1980, chap. 129, art. 271.

English ou An-  
glais, matières  
obligatoires de la  
9<sup>e</sup> à la 12<sup>e</sup> année

**272** (1) Si le conseil a ouvert une ou plusieurs écoles secondaires de langue française et qu'un certain nombre d'élèves du conseil ont choisi de recevoir leur enseignement en anglais, l'article 261 s'applique, avec les adaptations de circonstance, relativement aux dispositions concernant l'utilisation de l'anglais comme langue d'enseignement.

Classes en anglais  
lorsque des écoles  
ou des classes de  
langue française  
sont ouvertes

(2) Si le nombre d'élèves anglophones du conseil est inférieur au nombre d'élèves pour lequel la langue d'enseignement est le français et si :

Création d'un co-  
mité consultatif de  
langue anglaise

- a) au moins dix contribuables anglophones du district d'écoles secondaires adressent une demande écrite au conseil pour la création ou le développement dans une école secondaire d'une classe, d'un groupe ou d'un programme où l'anglais est ou doit être la langue d'enseignement;



## EDUCATION

the board shall establish an English-language advisory committee, and the provisions of sections 260 to 273 that apply to a committee in respect of the French-speaking ratepayers, pupils and community and in respect of French-language instructional units apply with necessary modifications to an English-language advisory committee in respect of the English-speaking ratepayers, pupils and community and in respect of schools or classes in which English is the language of instruction. 1974, c. 109, s. 266.

Admission  
of pupils  
other than  
French-  
speaking  
pupils

**273.**—(1) A board, on the request of an English-speaking pupil of the board or, where the pupil is a minor, of his parent or guardian, may admit the pupil to a French-language instructional unit if his admission is approved by a majority vote of an admissions committee appointed by the board and composed of the principal of the school in which the French-language instructional unit is operated, a French-language teacher of such school and, subject to subsection (2), a French-speaking supervisory officer employed by the board.

Where board  
has no  
French-  
speaking  
supervisory  
officer

(2) Where the board does not employ a French-speaking supervisory officer, it shall arrange for a French-speaking supervisory officer employed by another board or by the Minister to serve as a member of the admissions committee. 1974, c. 109, s. 267.

*Languages of Instruction Commission of Ontario*

Interpre-  
tation

**274.** In this Part,

- (a) "Commission" means the Languages of Instruction Commission of Ontario established under this Part;
- (b) "committee" means a French-language advisory committee or an English-language advisory committee established under section 262;
- (c) "ratepayer" in respect of a board means a person entitled to vote at an election of members of the board. 1974, c. 109, s. 268.

Establish-  
ment of  
Commission

**275.**—(1) A commission to be known as the Languages of Instruction Commission of Ontario is hereby established and shall be composed of five members appointed by the Lieutenant Governor in Council at least two of whom shall be French-speaking and at least two of whom shall be English-speaking, and one of the members shall be appointed as chairman.

## ÉDUCATION

- b) le conseil crée, développe ou décide de créer ou de développer une classe, un groupe ou un programme où l'anglais est ou doit être la langue d'enseignement,

le conseil doit créer un comité consultatif de langue anglaise. Les dispositions des articles 260 à 273 qui s'appliquent à un comité s'occupant des affaires des contribuables, des élèves et de la communauté francophones ainsi que des modules scolaires de langue française s'appliquent, avec les adaptations de circonstance, au comité consultatif de langue anglaise s'occupant des affaires des contribuables, des élèves et de la communauté anglophones ainsi que des écoles ou classes où l'anglais est la langue d'enseignement. L.R.O. 1980, chap. 129, art. 272.

**273 (1)** Le conseil peut, à la demande d'un élève anglophone inscrit à une école qui relève du conseil ou, si l'élève est mineur, à la demande de son père, de sa mère ou de son tuteur, accepter l'élève dans un module scolaire de langue française si son admission est approuvée à la majorité des voix lors d'un vote du comité d'admission nommé par le conseil et composé du directeur de l'école où se trouve le module scolaire de langue française, d'un professeur de langue française de cette école et, sous réserve du paragraphe (2), d'un agent de supervision francophone employé par le conseil.

Admission des  
élèves non franco-  
phones

**(2)** Si le conseil n'emploie pas d'agent de supervision francophone, il doit prendre les mesures nécessaires pour qu'un agent de supervision francophone employé par un autre conseil ou par le ministre agisse comme membre du comité d'admission. L.R.O. 1980, chap. 129, art. 273.

Si le conseil n'a  
pas d'agent de su-  
pervision franco-  
phone

*Commission des langues d'enseignement de l'Ontario*

**274** Les définitions qui suivent s'appliquent à la présente partie.

Définitions

«comité» Comité consultatif de langue française ou un comité consultatif de langue anglaise créé aux termes de l'article 262.

«Commission» La Commission des langues d'enseignement de l'Ontario créée aux termes de la présente partie.

«contribuable» En ce qui concerne le conseil, personne qui a le droit de voter lors de l'élection des membres du conseil. L.R.O. 1980, chap. 129, art. 274.



## EDUCATION

Term,  
reappoint-  
ment and  
remunera-  
tion

(2) Members of the Commission shall hold office for a term of one, two or three years as may be determined from time to time by the Lieutenant Governor in Council, may be reappointed and shall be paid such remuneration as is determined by the Lieutenant Governor in Council.

## Vacancies

(3) Where a vacancy occurs in the membership of the Commission, the vacancy may be filled for the unexpired portion of the term of the person whose office has become vacant.

Commission  
is responsi-  
ble to the  
Minister

(4) The Commission is responsible to the Minister for its operation and shall be assisted by such employees in the public service of Ontario as the Minister may assign for the purpose and may, as required from time to time, obtain the services of a lawyer.

## Quorum

(5) A quorum consists of three members of whom at least one shall be French-speaking and one English-speaking.

Recom-  
mendation

(6) A recommendation of the Commission requires the approval of at least a majority of the members of the Commission.

Duties of  
Commission

(7) The Commission shall consider matters referred to it by committees and requests for advice and assistance on questions in respect of which a committee may make recommendations, from boards and committees, and where there is no committee, from a group of ratepayers of the board concerned determined by the Commission to be representative of the French-speaking or English-speaking minority, as the case may be, within the jurisdiction of the board.

## Spokesman

(8) A group referred to in subsection (7) shall name one of its members as its spokesman.

Referral to  
Commission  
by Minister

(9) The Minister may refer to the Commission any matter relating to instruction in the French language or, where the pupils of a board who receive instruction in the English language are a minority of the pupils of a board, any matter relating to instruction in the English language.

Determina-  
tion by  
Commission  
re establish-  
ment of  
advisory  
committee

(10) Where, within the area of jurisdiction of a board, there is doubt as to whether the French-speaking or English-speaking pupils are in the minority, the Commission has the power to determine whether there shall be a French-language advisory committee or an English-language advisory committee, or both, and the board shall establish such committee or committees as the Commission determines.

## ÉDUCATION

**275 (1)** Une commission connue sous le nom de Commission des langues d'enseignement de l'Ontario est créée par les présentes. Elle se compose de cinq membres nommés par le lieutenant-gouverneur en conseil dont deux au moins doivent être francophones et deux au moins doivent être anglophones. Un des membres est nommé à la présidence. L.R.O. 1980, chap. 129, par. 275 (1).

Création de la Commission

(2) Le mandat des membres de la Commission est d'un, deux ou trois ans selon ce que peut fixer le lieutenant-gouverneur en conseil. Les membres peuvent être nommés à nouveau et touchent la rémunération que fixe le lieutenant-gouverneur en conseil. 1982, chap. 32, art. 67.

Mandat, renouvellement de la nomination et rémunération

(3) Si le poste d'un membre de la Commission devient vacant, il peut y être pourvu pour la période non expirée du mandat.

Vacance

(4) La Commission relève du ministre en ce qui concerne son champ d'action. Elle doit bénéficier de l'aide des fonctionnaires de l'Ontario que le ministre peut nommer à cette fin, et elle peut, selon les besoins et à l'occasion, retenir les services d'un avocat.

La Commission rend compte au ministre

(5) Le quorum comprend trois membres dont au moins un francophone et un anglophone.

Quorum

(6) Une recommandation de la Commission requiert l'approbation d'au moins la majorité des membres de la Commission.

Recommandation

(7) La Commission étudie les questions dont les comités la saisissent ainsi que les demandes d'avis et d'aide sur les questions à l'égard desquelles un comité peut faire des recommandations, si ces demandes proviennent de conseils et de comités, et en l'absence de comité, d'un groupe de contribuables du conseil intéressé que la Commission fixe comme étant représentatif de la minorité francophone ou anglophone, selon le cas, qui relève de la compétence du conseil.

Fonctions de la Commission

(8) Un des membres du groupe mentionné au paragraphe (7) doit être nommé comme porte-parole.

Porte-parole

(9) Le ministre peut renvoyer devant la Commission les questions relatives à l'enseignement en français ou, si les élèves d'un conseil qui reçoivent leur enseignement en anglais constituent une minorité parmi les élèves du conseil, les questions relatives à l'enseignement en anglais.

Renvoi à la Commission par le ministre



## EDUCATION

Investigation  
of  
irregularity

(11) Where, within thirty days of the election of a committee, the board or the committee requests the Commission to investigate an alleged irregularity respecting the election of a member of the committee, the Commission shall investigate such election and give the member an opportunity to make representation to the Commission and shall declare the member to be elected if the Commission finds the election and procedures to be substantially in accordance with this Part or declare his seat vacant if the Commission finds the election and procedures not to be substantially in accordance with this Part and shall send a copy of its decision and reasons therefor to the board or committee and to the member.

Deferral of  
action by  
board

(12) When a matter is referred to the Commission, the board concerned shall defer action thereon until the matter has been resolved.

Commission  
shall request  
mediation  
or reject  
referral

(13) When a matter is referred to the Commission it shall,

- (a) forthwith appoint one or more mediators where it considers that the furtherance of such matter may be conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community; or
- (b) except where a matter is referred by the Minister, take no further action where it considers that the furtherance of such matter is not conducive to meeting the educational and cultural needs of the French-speaking or the English-speaking community.

Where  
referral  
rejected

(14) Where the Commission takes no further action on a referral it shall forthwith send notice in writing of its decision and of the reasons therefor to the board, the Minister and either the committee or the spokesman referred to in subsection (8).

Notice of  
appointment  
of mediator

(15) Where the Commission makes an appointment under subsection (13) it shall communicate the name and address of each mediator to,

- (a) the Minister;
- (b) the secretary of the board; and
- (c) the chairman of the committee,

and where a committee has not been established by a board, to the spokesman of the group referred to in subsection (8).  
1974, c. 109, s. 269; 1982, c. 32, s. 67.

## ÉDUCATION

(10) Si, dans le secteur qui relève de la compétence du conseil, il y a doute si ce sont les élèves francophones ou les élèves anglophones qui constituent la minorité, la Commission jouit du pouvoir de décider si un comité consultatif de langue française ou un comité consultatif de langue anglaise doit être créé ou si les deux doivent l'être. Le conseil crée ce ou ces comités selon la décision de la Commission.

Décision par la Commission concernant la création d'un comité consultatif

(11) Si, dans les trente jours de l'élection d'un comité, le conseil ou le comité demande à la Commission d'enquêter sur une irrégularité présumée concernant l'élection d'un membre du comité, la Commission procède à cette enquête et donne au membre l'occasion de se faire entendre devant elle. Elle déclare le membre élu si elle constate que l'élection et son déroulement ont été essentiellement conformes à la présente partie ou déclare son poste vacant dans le cas contraire. Elle envoie une copie de sa décision motivée au conseil ou au comité ainsi qu'au membre.

Enquête relative aux irrégularités

(12) Si la Commission est saisie d'une question, le conseil intéressé ne prend aucune mesure à ce sujet jusqu'à ce que la question ait été résolue.

Le conseil ne doit prendre aucune mesure

(13) Si une question est renvoyée devant la Commission, celle-ci :

Demande de médiation ou refus du renvoi par la Commission

- a) nomme immédiatement un ou plusieurs médiateurs si elle juge que la poursuite de cette question peut contribuer à satisfaire les besoins d'ordre éducatif et culturel de la communauté francophone ou anglophone;
- b) sauf si la question est renvoyée par le ministre, ne prend aucune autre mesure si elle juge que la poursuite de cette question ne contribue pas à satisfaire les besoins d'ordre éducatif et culturel de la communauté francophone ou anglophone.

(14) Si la Commission ne prend pas d'autre mesure relativement à un renvoi, elle doit immédiatement envoyer un avis écrit de sa décision motivée au conseil, au ministre et soit au comité soit au porte-parole mentionné au paragraphe (8).

Refus du renvoi

(15) Si la Commission procède à une nomination aux termes du paragraphe (13), elle communique le nom et l'adresse de chaque médiateur :

Avis de nomination de médiateur

- a) au ministre;
- b) au secrétaire du conseil;
- c) au président du comité,



EDUCATION

Remunera-  
tion

**276.**—(1) Mediators shall be paid such remuneration as the Lieutenant Governor in Council may determine.

Who not  
eligible  
as mediator

(2) A mediator shall not be a member of the Commission.

Duties of  
mediator

(3) The mediator or mediators shall, after inquiring into the matter referred for mediation and conferring with the parties involved, endeavour to bring about an agreement and shall, within twenty-one days of being appointed, report to the Commission the agreement that has been reached, or the failure to bring about agreement.

Extension of  
period of  
mediation

(4) The period referred to in subsection (3) may be extended by the Commission or by agreement of the parties to the mediation. 1974, c. 109, s. 270.

Duties of  
Commission

**277.**—(1) Where the report of the mediator or mediators to the Commission indicates failure to bring about an agreement, the Commission shall consider and inquire into all pertinent aspects of the matter referred to mediation and shall, within twenty-one days of its receipt of the report, recommend to the board in writing a course of action that it considers appropriate to settle the matter and shall send copies of its recommendation to the Minister and either the committee or the spokesman referred to in subsection 275 (8).

Report of  
board to  
Minister

(2) Within thirty days of its receipt of a copy of the recommendation of the Commission, the board shall report in writing to the Minister its decision in respect of the recommendation of the Commission and shall forward copies of the decision to the Commission and to the committee or spokesman of the group, as the case may be. 1974, c. 109, s. 271.

. . . . .

ÉDUCATION

et, si le conseil n'a pas créé de comité, au porte-parole du groupe mentionné au paragraphe (8). L.R.O. 1980, chap. 129, par. 275 (3) à (15).

276 (1) Les médiateurs perçoivent la rémunération que le lieutenant-gouverneur en conseil peut fixer.

Rémunération

(2) Les membres de la Commission ne peuvent pas être nommés médiateur.

Inadmissibilité aux fonctions de médiateur

(3) Le ou les médiateurs, après avoir mené une enquête sur la question soumise à leur médiation et s'être entretenus avec les parties intéressées, s'efforcent de les faire arriver à une entente et doivent, dans les vingt et un jours de leur nomination, présenter un rapport à la Commission de l'entente à laquelle les parties sont parvenues ou sur l'impossibilité d'y arriver.

Fonctions du médiateur

(4) Le délai mentionné au paragraphe (3) peut être prolongé par la Commission ou par la volonté des parties à la médiation. L.R.O. 1980, chap. 129, art. 276.

Prolongation du délai de médiation

277 (1) Si le rapport du ou des médiateurs présenté à la Commission révèle l'impossibilité de faire parvenir les parties à une entente, la Commission étudie tous les aspects pertinents de la question soumise à la médiation, enquête à ce sujet et doit, dans les vingt et un jours de la réception du rapport, recommander au conseil par écrit les mesures qu'elle considère appropriées afin de régler la question. Elle envoie des copies de sa recommandation au ministre et soit au comité ou au porte-parole mentionné au paragraphe 275 (8).

Fonctions de la Commission

(2) Dans un délai de trente jours à compter de la réception d'une copie de la recommandation de la Commission, le conseil fait connaître par écrit au ministre sa décision relative à la recommandation de la Commission et fait parvenir des copies de sa décision à la Commission et au comité ou au porte-parole du groupe, selon le cas. L.R.O. 1980, chap. 129, art. 277.

Rapport du conseil au ministre

. . . . .



# An Act to require The Essex County Board of Education to provide a French-language Secondary School

S.O. 1977, c. 5

**W**HEREAS the French-language advisory committee of Preamble  
The Essex County Board of Education has, since 1969, consistently recommended that a French-language secondary school be provided; and whereas, upon such recommendation having been rejected by the Board in the year 1974, the Languages of Instruction Commission of Ontario recommended that the Board provide such a school; and whereas The Essex County Board of Education, having initially rejected the recommendation of the Commission, subsequently agreed in April, 1975 to proceed with construction of a French-language secondary school, but on and after the 23rd day of February, 1976 ceased to proceed therewith; and whereas a mediator appointed by order in council No. 1452/76 recommended in February, 1977 that the Board build such school, but the Board, on or about the 8th day of March, 1977, decided not to build the school and it is now apparent that no such school will be provided at this time; and whereas there are sufficient French-speaking secondary school pupils resident in or adjacent to the area of jurisdiction of The Essex County Board of Education who have elected to be taught in the French language to warrant the provision of a French-language secondary school; and whereas the public interest, and in particular the interests of such French-speaking secondary school pupils, requires that such a school be constructed;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

**Interpre-  
tation**

- (a) "Board" means The Essex County Board of Education;
- (b) "Deputy Minister" means the Deputy Minister of Education;
- (c) "Minister" means the Minister of Education;
- (d) "Ministry" means the Ministry of Education;
- (e) "School" means the French-language secondary school required to be constructed by this Act.



## ESSEX COUNTY

Deemed  
resolution  
of Board

2. On the day upon which this Act comes into force, the Board is deemed to have passed a resolution to construct a building suitable for a School to accommodate seven hundred and fifty French-speaking secondary school pupils.

Board to  
construct  
School

3. Within thirty days after the coming into force of this Act, the Board shall, at a special meeting of the Board,

(a) select a site for the School that is not, on the day this Act comes into force, the location of an existing school; and

(b) appoint an architect and any other persons required for the purpose of building the School,

and following such meeting, the Board shall forthwith proceed with the planning and design of the building, obtain all approvals required for construction of the School and, upon receipt of such approvals, proceed in accordance with the policies of the Board to tender and contract for the construction of the School.

Notice  
by  
Minister

4.—(1) Where, in the opinion of the Minister, the Board fails to take any action or proceeding that it is required to take under section 3, the Minister may, by notice in writing to the Board, specify the action or proceeding that the Board has failed to take and direct the Board to take such action or proceeding within such time, being not less than ten days after the notice is sent, as the notice specifies.

Minister  
may cause  
School to be  
constructed

(2) Where the Minister has sent notice to the Board under subsection 1 and the Board fails to take the action or proceeding specified in the notice within the time limited therefor, the Minister may thereupon cause all such things to be done as are necessary to construct the School including, but not limited to, the selection of a site, the appointment of an architect, the planning and design of the building, the obtaining of all necessary approvals and the tendering and contracting for the construction of the School.

Possession of  
site deemed  
given to  
Crown

(3) Where the site selected by the Minister under subsection 2 is owned by the Board, the Board shall be deemed to have given possession of the site to the Crown in right of Ontario for the purpose of the construction of the School.

Acquisition  
of site under  
1973, c. 2

(4) Where the site selected under subsection 2 is not owned by the Board or by the Crown in right of Ontario, the site shall be acquired under *The Ministry of Government Services Act, 1973*.

## ESSEX COUNTY

(5) Where construction of the School is not carried out by the Board, the ownership of the School, and of the site where the site is acquired under subsection 4, shall, upon completion of the School as certified by the architect, vest in the Board.

Building  
and site  
vested in  
Board

(6) The expenses incurred by the Minister in taking any action or proceeding that the Minister is authorized to take under subsection 2 that are in excess of any moneys payable to the Board by way of grant by the Minister in respect of the construction of the School are a debt due to the Crown by the Board and may be recovered with costs, by action in a court of competent jurisdiction.

Expenses  
recoverable  
from  
Board

(7) The Minister, in exercising the powers conferred on him under subsection 2, may make use of the services and facilities of any ministry, board, commission or agency of the Government of Ontario.

Use of  
services  
and  
facilities  
of  
ministries,  
etc.

(8) The Minister may in writing delegate to the Deputy Minister or to any officer or officers of the Ministry, subject to such limitations, restrictions, conditions or requirements as the Minister sets out in his delegation, any of the powers conferred on the Minister under subsection 2.

Delegation  
of  
Minister's  
powers

5. The School that is constructed under this Act shall be conducted and maintained by the Board as a French-language secondary school in accordance with *The Education Act, 1974* and the regulations made thereunder.

Conduct  
of  
School  
1974, c. 109

6. This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

7. The short title of this Act is *The Essex County French-language Secondary School Act, 1977*.

Short title



Business Corporations Act, 1982

S.O. 1982, c. 4

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10.—(1) The word “Limited”, “Limitée”, “Incorporated”, Use of “Limited”, “Limitée”, etc. “Incorporée”, or “Corporation” or the corresponding abbrevia-  
tions “Ltd.”, “Ltée”, “Inc.” or “Corp.” shall be part, in addition to  
any use in a figurative or descriptive sense, of the name of every  
corporation, but a corporation may be legally designated by either  
the full or the abbreviated form.

(2) Subject to the provisions of this Act and the regulations, a Corporate name  
corporation may set out its name in its articles in an English form,  
a French form, an English form and a French form or a  
combined English and French form and it may be legally desig-  
nated by any such name.

(3) For the purposes of subsections (1) and (2), only letters Idem  
from the alphabet of the English language or Arabic numerals or  
a combination thereof, together with such punctuation marks  
and other marks as are permitted by regulation, may form part of  
the name of a corporation.

(4) Subject to the provisions of this Act and the regulations, a Idem  
corporation may have in its articles a special provision permitting  
it to set out its name in any language and the corporation may be  
legally designated by that name.

(5) Notwithstanding subsection (4), a corporation shall set out its Idem  
name in legible characters in all contracts, invoices, negotiable  
instruments and orders for goods or services issued or made by or  
on behalf of the corporation and in all documents sent to the  
Director under this Act. R.S.O. 1980, c. 54, s. 8, *amended*.

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Corporations Act

R.S.O. 1980, c. 95

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Use of  
name

22. Notwithstanding subsection 20 (1) and section 21, a company may use its name in such form and in such language as the letters patent or supplementary letters patent provide. R.S.O. 1970, c. 89, s. 23.

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## Co-operative Corporations Act

R.S.O. 1980, c. 91

with amendments to date, including 1981, c. 61

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et ses modifications à jour, y inclus 1981, c. 61

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8. Notwithstanding section 7, a co-operative may use its <sup>Use of</sup> name in such form and in such language as the articles provide <sup>name</sup> and as the Minister approves. 1973, c. 101, s. 8.

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Credit Unions and Caisses Populaires Act

R.S.O. 1980, c. 102

with amendments to date, including 1983, c.46

. . . . .

Use of  
"credit  
union"

5.—(1) The name of a credit union shall include the words "credit union" or "caisse populaire" as part thereof.

Use of  
"Limited"

(2) The name of a credit union shall have the words "Limited" or "Limitée", or "incorporated" or "incorporée", or its corresponding abbreviation "Ltd", "Ltée", or "Inc" as the last word thereof.

Exception  
from subs. (1)

(3) Notwithstanding subsection (1), a credit union incorporated under a predecessor of this Act may continue to use the name under which it was incorporated. 1976, c. 62, s. 5.

Use of  
name

6. Notwithstanding section 5, a credit union may use its name in such form and in such language as the articles provide and as the Minister approves. 1976, c. 62, s. 6.

. . . . .

24.

Documents  
to be kept

(3) Every credit union shall keep or cause to be kept the following documents and registers in either English or French only,

- (a) a copy of its articles;
- (b) the by-laws and resolutions, including special resolutions, of the credit union;
- (c) a register of the members of the board of directors, credit committee and supervisory committee, and all officers of the credit union, setting out their names, residence addresses, giving the street and number, if any, and occupations, with the several dates on which they have become or ceased to be a member of such board or committee;
- (d) a register of all securities held by the credit union;
- (e) books of account and accounting records with respect to all financial and other transactions of the credit union as may be required by the Director;
- (f) the minutes of all proceedings at meetings of members, directors and any committees. 1976, c. 62, s. 24.



Loi sur les caisses populaires et les *credit unions*

L.R.O. 1980, c. 102

et ses modifications à jour, y inclus 1983, c. 46

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5 (1) La dénomination de la caisse doit comprendre l'expression «caisse populaire» ou «*credit union*».

Utilisation des expressions «caisse populaire» et «*credit union*»

(2) La dénomination de la caisse doit se terminer par le mot «limitée», «Limited», «incorporée» ou «Incorporated», ou par les abréviations correspondantes, savoir «ltée», «Ltd», «inc.» ou «Inc.».

Utilisation du mot «limitée»

(3) Par dérogation au paragraphe (1), la caisse constituée en vertu d'une loi que la présente loi remplace peut conserver sa dénomination originale. L.R.O. 1980, chap. 102, art. 5.

Exception

6 Par dérogation à l'article 5, la caisse peut utiliser la dénomination figurant dans ses statuts et approuvée par le ministre. L.R.O. 1980, chap. 102, art. 6.

Utilisation de la dénomination

24 . . . . .

(3) La caisse tient ou fait tenir, en français ou en anglais seulement, les documents et registres suivants :

Documents à conserver

- a) un exemplaire de ses statuts constitutifs;
- b) ses règlements administratifs et ses résolutions, y compris les résolutions spéciales;
- c) un registre des membres du conseil d'administration, du comité du crédit, du comité de surveillance et des dirigeants de la caisse, qui précise le nom, l'adresse personnelle au complet et la profession de chacun, ainsi que les dates auxquelles il est devenu ou a cessé d'être membre ou dirigeant;
- d) un registre des titres qu'elle détient;
- e) les livres et registres comptables concernant ses opérations, notamment financières, que le directeur peut exiger;
- f) les procès-verbaux des assemblées des sociétaires et des réunions du conseil d'administration, du comité de surveillance et du comité du crédit. L.R.O. 1980, chap. 102, art. 24.

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Municipal Act

R.S.O.1980, c. 302

with amendments to date, including 1983, c. 41

et ses modifications à jour, y inclus 1983, c. 41

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English and French by-laws and resolutions	104a.—(1) Every council may pass its by-laws and resolutions in English or in both English and French.
Official plans	(2) Every council may adopt an official plan that is in English or that is in both English and French.
Proceedings of council	(3) Every council and every committee of council may conduct its proceedings in English or French or in both English and French.
Minutes	(4) Notwithstanding subsection (3), the minutes of the proceedings of council and all committees of council shall be kept in English or, where so authorized by a by-law of the council, in both English and French.
Conduct of affairs, etc., of municipality	(5) Unless otherwise directed by a by-law of the council, the officers and servants of a municipality may conduct the business and affairs of the municipality in such language, including a language other than English or French, as may be reasonable in the circumstances.
Proviso	(6) Nothing in this section,  (a) affects an obligation imposed by or under any Act to make, keep, use, file, register or submit any form, book, document or other paper of any kind in the language or languages specified by or under the Act;  (b) affects any requirement at law to give reasonable notice.
Translations	(7) Where any form, book, document or other paper of any kind is submitted by a municipality to a ministry of the Government of Ontario in French, the municipality shall, at the request of the minister of the ministry to which the form, book, document or other paper was submitted, supply the minister with an English translation thereof. 1982, c.50, s.7.

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MUNICIPAL

501.—(1) The Minister may, by order, prescribe an English and French language version of any form prescribed by or under this Act.

English and  
French  
language  
forms

(2) The council of a municipality may, by by-law, provide for the use in the municipality of the version of the form prescribed by the Minister under subsection (1) in place of the corresponding form prescribed by or under this Act, and, notwithstanding any other provision in this Act, where a by-law under this subsection is in force in a municipality the version of the forms provided for in the by-law shall be used in the municipality in place of the corresponding forms prescribed by or under this Act. 1979, c. 63, s. 15.

By-laws  
providing  
for use  
of forms

.....



Municipal Elections Act

R.S.O. 1980, c. 308

with amendments to date including 1982, c. 37

et ses modifications à jour, y inclus 1982, c. 37

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Forms

119.—(1) The Minister may by order prescribe the forms required for the purposes of this Act, which forms may be in both the English and French languages.

Notices in  
French  
language

(2) Any notices required to be posted, published or mailed under this Act may, in addition to being printed in the English language, be printed in the French language.

Determina-  
tion  
by council  
of French-  
language  
forms, etc.

(3) The use in a municipality of forms prescribed in the French language under subsection (1) or the printing of notices in the French language under subsection (2) shall be determined by by-law of the council of the municipality. 1977, c. 62, s. 119.

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Regional Municipality of Ottawa-Carleton Act

R.S.O. 1980, c. 439

with amendments to date, including 1983, c. 72, ss. 33-36.

et ses modifications à jour, y inclus 1983, c. 72, ss. 33-36

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178.—(1) The Minister may by order prescribe an English and French language version of any form that is prescribed by this Act.

Forms in both French and English language

(2) The Regional Council may by by-law provide for the use of the version of the form prescribed by the Minister under subsection (1) in place of the corresponding form prescribed by this Act, and, notwithstanding any other provision in this Act, where a by-law under this subsection is in force the version of the form provided for in the by-law shall be used in place of the corresponding form prescribed by this Act. 1979, c. 81, s. 16.

Use of forms

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Regional Municipality of Sudbury Act

R.S.O. 1980, c. 441

with amendments to date, including 1983, c. 72, ss. 43-50

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et ses modifications à jour, y inclus 1983, c. 72, ss. 43-50

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Forms in both  
English and  
French  
language

**115.**—(1) The Minister may by order prescribe an English and French language version of any form that is prescribed by this Act.

Use of forms

(2) The Regional Council may by by-law provide for the use of the version of the form prescribed by the Minister under subsection (1) in place of the corresponding form prescribed by this Act and, notwithstanding any other provision in this Act, where a by-law under this subsection is in force the version of the form provided for in the by-law shall be used in place of the corresponding form prescribed by this Act. 1979, c. 81, s. 76.

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Local Services Boards Act

R.S.O. 1980, c. 252

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**33.** The Minister may by order prescribe a French language Forms in French language version of any form that is prescribed by this Act and provide for its use. 1979, c. 82, s. 33.

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Loi sur les régies locales des services publics

L.R.O. 1980, c. 252

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**33** Le ministre peut, par arrêté, prévoir une version française Formules en français des formules que prescrit la présente loi et les modalités de leur emploi. L.R.O. 1980, chap. 252, art. 33.

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# Occupational Health and Safety Act

R.S.O. 1980, c. 321

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14.

(2) Without limiting the strict duty imposed by subsection (1), an employer shall,

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(h) post, in the work place, a copy of this Act and any explanatory material prepared by the Ministry, both in English and the majority language of the work place, outlining the rights, responsibilities and duties of workers. 1978, c.83, s.14.

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## Loi sur la santé et la sécurité au travail

L.R.O. 1980, c. 321

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14(2) En outre, l'employeur

h) affiche dans le lieu de travail, en anglais et dans la langue de la majorité des travailleurs à cet endroit, une copie de la présente loi et des documents explicatifs préparés par le ministère sur les droits, responsabilités et devoirs des travailleurs.

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NATIVE RIGHTS



DROITS DES AUTOCHTONES





NATIVE RIGHTSNote:

Ontario has 115 Indian bands with a total registered membership of 68,726 (Annual Report of Indian and Northern Affairs for 1981-82), 163 reserves with a total acreage of 1,500,000 (end of 1975), and 6 settlements.

In addition to federal statutes referred to in volume 2 of this collection, Chapter J, the following provincial statute, not reproduced here, deals with native rights:

1. Indian Welfare Services Act, R.S.O. 1980, c. 214.

Note: This statute declares the Indians of Ontario eligible for welfare benefits, and authorizes the making of Canada-Ontario agreements respecting their well-being.

Nearly 25 statutes of Ontario contain some provisions dealing with native rights. These statutes can be located in the index to the Revised Statutes of Ontario, 1980, under the heading "Indians".

## DROITS DES AUTOCHTONES

### Note:

L'Ontario compte 115 bandes indiennes pour une population inscrite de 68,726 habitants (Rapport annuel 1981-1982 des Affaires indiennes et du Nord), ainsi que 163 réserves d'une superficie totale de plus de 1,500,000 âcres à la fin de 1975 et 6 établissements.

Outre la législation fédérale reproduite et signalée au chapitre J du volume 2 de cette collection, la législation provinciale résumée ci-après, mais non reproduite, traite des droits des autochtones:

1. Indian Welfare Services Act, R.S.O. 1980, c. 214

Cette loi de portée générale déclare les Indiens de l'Ontario éligibles à certains programmes de sécurité sociale et autorise la conclusion d'ententes fédérales-provinciales visant leur bien-être.

Près de 25 lois ontariennes contiennent certaines dispositions relatives aux autochtones. Ces lois peuvent être retracées sous la rubrique "Indians" de l'index des Revised Statutes of Ontario, 1980.

EMERGENCY MEASURES



MESURES D'URGENCE





EMERGENCY MEASURESNote:

Ontario does not have provincial legislation comparable with the federal War Measures Act, reproduced in volume 2 of this collection, chapter L. The province is subject to this federal statute, and also has passed its own Emergency Plans Act (S.O. 1983, c. 30), not reproduced here. This statute provides for the formulation and implementation of emergency plans between municipalities, ministries and other provincial governmental bodies, and the Lieutenant Governor in Council in situations constituting a danger of major proportions to life or property.

MESURES D'URGENCENote:

L'Ontario n'a pas de loi comparable à la Loi sur les mesures de guerre adoptée par le Parlement fédéral et reproduite au chapitre L du volume 2 de cette collection. Bien que soumise à cette loi, cette province a tout de même édicté l'Emergency Plans Act (S.O. 1983, c. 30), non reproduit ici. Cette loi répartit entre les municipalités, les ministères et sociétés d'état de la province et le lieutenant-gouverneur en conseil le pouvoir de planifier et mettre sur pied des services d'urgence en cas de danger susceptible de mettre en péril la vie et la propriété des gens.

MISCELLANEOUS



DIVERS





## COAT OF ARMS, FLAG, AND EMBLEM

### Introduction

The arms of Ontario were granted by royal warrant of Queen Victoria, dated May 26, 1868, and the crest, supporters and motto were granted by royal warrant of King Edward VII, dated February 27, 1909. The shield is formed by the cross of St. George at the top, and below a stem of three gold maple leaves on a green field. Above the shield is the crest of a black walking bear upon a wreath of twisted silk coloured gold and green, and the supporters consist of a moose on the left, and a Canadian deer on the right-hand side. The motto under the shield: Ut incepit fidelis sic permanet means "Loyal she began and loyal she remains."

The official flag of Ontario is the Red Ensign with the Royal Union Flag, commonly known as Union Jack, in the upper quarter, and the shield of the provincial arms in the fly. The flag was adopted by a statute of Ontario assented to on April 14, 1965, and proclaimed into force on May 21, 1965, and it is reproduced below.

### Selected references:

The Arms, Flags, and Emblems of Canada, 2d rev. ed., Ottawa, Deneau Publishers, and Minister of Supply & Services Canada, 1981, pp. 14-19. Published in co-operation with the Dept. of the Secretary of State.

Swan, Conrad, Canada: Symbols of Sovereignty, Toronto, University of Toronto Press, c1977, pp. 161-178.

## ARMOIRIES, DRAPEAU ET EMBLÈMES

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### Introduction

Les armoiries de l'Ontario ont été octroyées par décret de la reine Victoria en date du 26 mai 1868, tandis que le cimier, les supports et la devise ont été accordés par décret du roi Edouard VII daté du 27 février 1909. L'écu comprend la croix de Saint-Georges à sa partie supérieure et, à sa partie inférieure, un rameau d'érable à trois feuilles dorées sur champ vert. Le cimier est monté par un ours, alors que les supports se composent d'un orignal à droite et d'un chevreuil du Canada à gauche de l'écu. La devise de la province, inscrite sous l'écu, est Ut Incepit Fidelis Sic Permanet qui signifie "Fidèle elle a commencé, fidèle elle demeure".

Le drapeau officiel de l'Ontario est le Red Ensign sur lequel sont reproduits le drapeau Royal Union, mieux connu sous le nom d'Union Jack, qui occupe le canton, ainsi que les armoiries de la province placées sur le battant. Ce drapeau a été adopté en vertu d'une loi ontarienne sanctionnée le 14 avril 1965 et proclamée le 21 mai 1965; cette loi est reproduite ci-après.

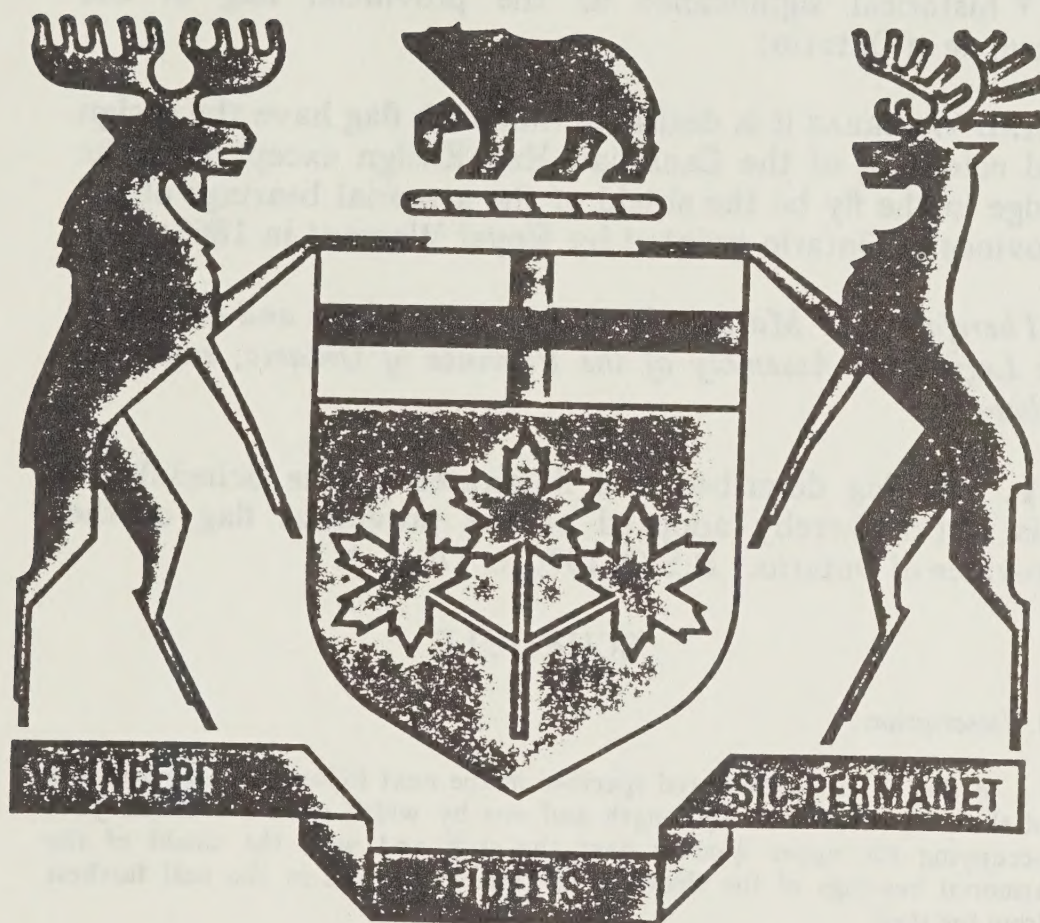
### Sources choisies

The Arms, Flags, and Emblems of Canada, 2d rev. ed., Ottawa, Deneau Publishers, and Minister of Supply & Services Canada, 1981, pp. 14-19. Published in co-operation with the Dept. of the Secretary of State.

Swan, Conrad, Canada: Symbols of Sovereignty, Toronto, University of Toronto Press, c1977, pp. 161-178.



ARMS / ARMOIRIES





## Flag Act

R.S.O. 1980, c. 169

### Preamble

**W**HEREAS it is deemed expedient to adopt a flag of historical significance as the provincial flag of the Province of Ontario;

**AND WHEREAS** it is desirable that such flag have the design and colouring of the Canadian Red Ensign except that the badge in the fly be the shield of the armorial bearings of the Province of Ontario granted by Royal Warrant in 1868;

*Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:*

### Provincial flag adopted

1. The flag described and illustrated in the Schedule to this Act is hereby adopted as the provincial flag of the Province of Ontario. R.S.O. 1970, c. 176, s. 1.

## SCHEDULE

### 1. Description:

A flag of the shade of red specified in the next following paragraph and of the proportions two by length and one by width with the Union Jack occupying the upper quarter next the staff and with the shield of the armorial bearings of the Province of Ontario centred in the half farthest from the staff.

British Admiralty Colour Code No. T1144 for nylon worsted bunting and No. T818A for other bunting.

### 2. Illustration:

